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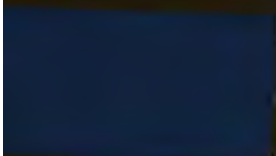
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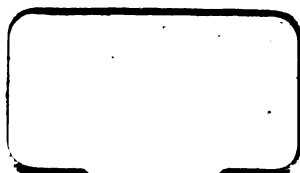
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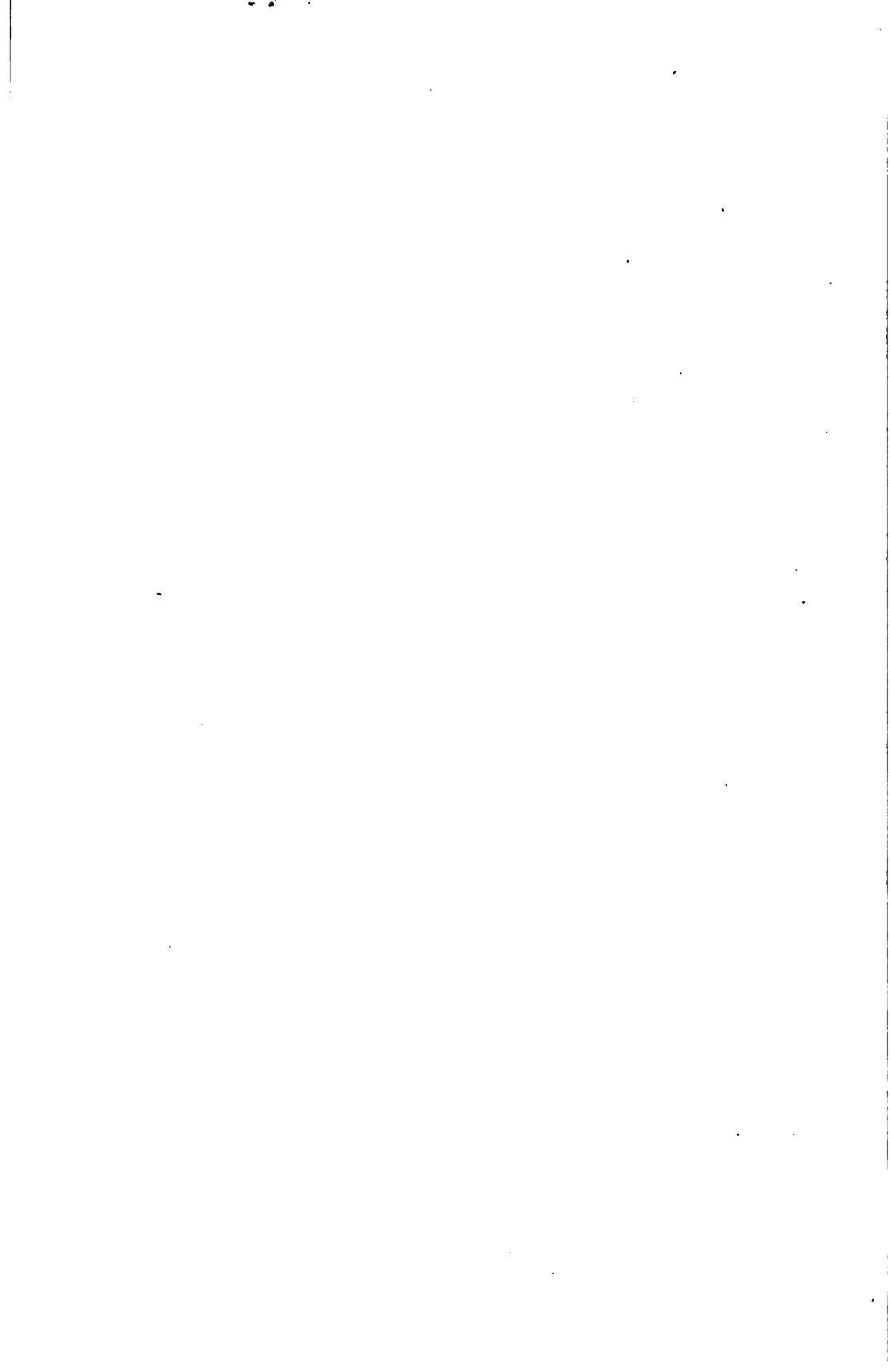




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A MANUAL
OF
MAINE CORPORATION LAW

CONTAINING
The Statutes Regulating Business Corporations,
A Digest of these Statutes, and the
Principal Corporation Forms
Used in Maine

BY ^{1114.11}
HERBERT M. HEATH

SECOND EDITION
Revised and Enlarged by
○ **CHARLES L. ANDREWS**
of the
AUGUSTA, MAINE BAR

**This edition includes the new Revised Statutes of 1916 and all Statutes
and Court Decisions to November 1, 1916.**

Portland, Maine
Loring, Short & Harmon
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by
Charles L. Andrews

MAR 7 1917

Amendments to be Inserted in Second Edition of

MAINE CORPORATIONS

The Legislature of 1919 made but two amendments to the corporation laws of Maine.

By Chapter 23 of the Public Laws, proxies may now be granted ninety days before the meeting at which they are to be used instead of thirty days as formerly. Reference to this may be found on pages 42 and 120 of the text and page 242 of Statutory Provisions. This amends Section 18 of Chapter 51 of the Revised Statutes found on page 242 of the book.

Chapter 49 of the Public Laws amends the present statute in regard to signing stock certificates. Hereafter stock certificates may be signed by "such officer or officers as the by-laws shall prescribe." This will change pages 83 and 133 of the text and page 248 of Statutory Provisions. This amends Section 36 of Chapter 51 of the Revised Statutes as found on said page 248.

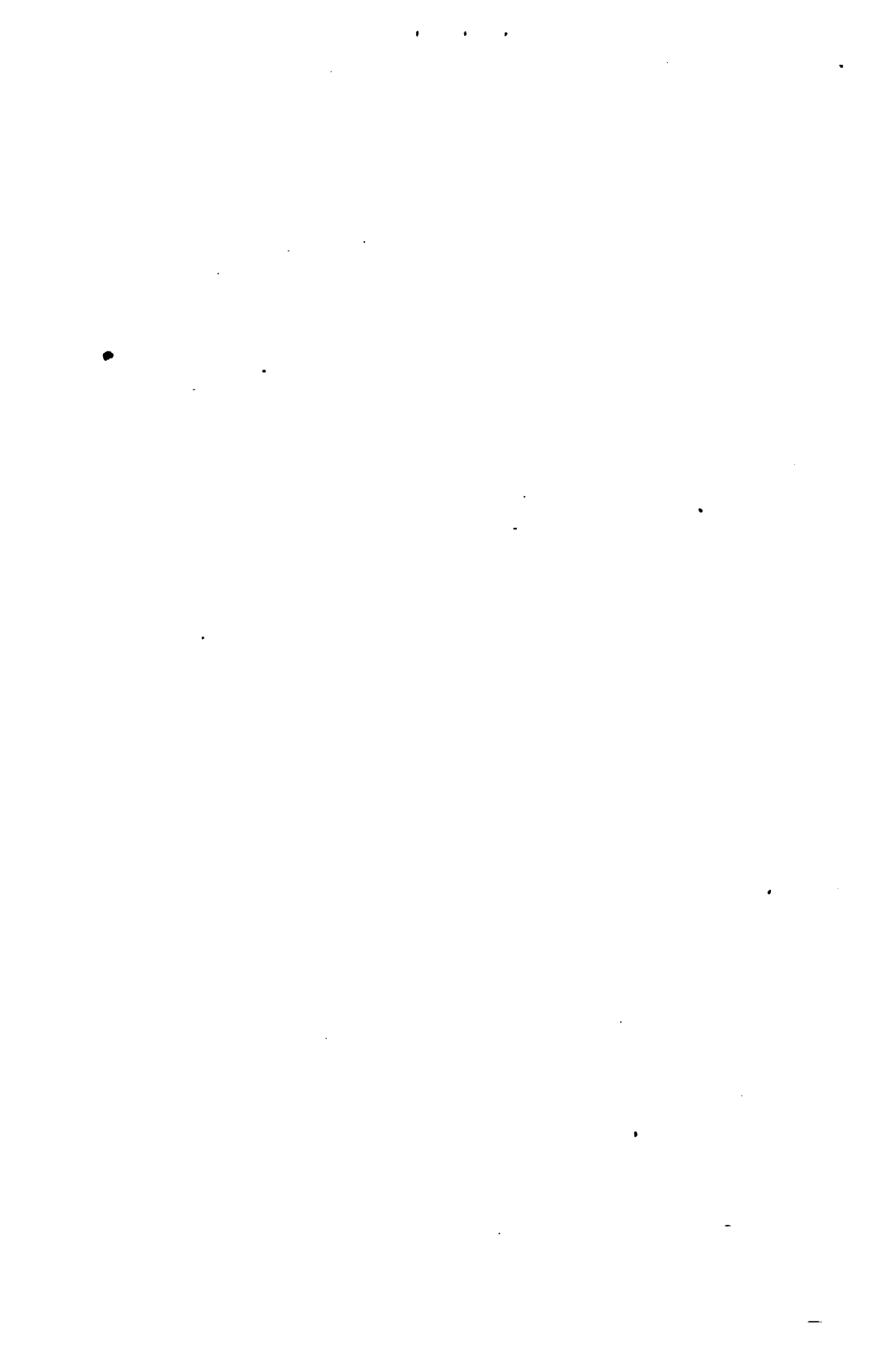
Hereafter it will be necessary for all corporations to provide expressly by their by-laws who shall sign stock certificates.

**CHANGES IN THE CORPORATION LAWS OF MAINE
MADE BY THE LEGISLATURE OF 1917.**

FOR INSERTION IN MAINE CORPORATIONS

The Legislature of Maine which adjourned April 7, 1917, made but two changes in the corporation laws of this state. The first is chapter 144, Public Laws of 1917, which authorizes the organization of corporations without capital stock. This act is to become Sections 115 to 119 inclusive of Chapter 51, the chapter relating to corporations, and can be inserted in the book after page 160. This act is copied after the New York act which has been much used in New York and Connecticut.

The only other amendment is Chapter 266 of the Public Laws of 1917, the last section of which repeals Section 24 of Chapter 69 of the Revised Statutes. The following slip relating to same may be inserted between pages 152 and 153 of Maine Corporations.



To be inserted after page 152, Maine Corporations.

Section 3 of Chapter 266, Public Laws of 1917 repeals Section 24 of Chapter 29 of the Revised Statutes referred to on page 152 of Maine Corporations. This act takes effect July 6, 1917 and thereafter the Attorney General will not issue certificates as heretofore provided by said Section 64.

The form No. 94 on page 228 of Maine Corporations of affidavit to obtain exemption from inheritance tax will therefore not be available after July 6.

Said Section 24 of Chapter 69 will be found on page 279, Maine Corporations and should be marked on the margin thereof as repealed to take effect July 6, 1917.

To be inserted after page 160, Maine Corporations.

Chapter 144, Public Laws of Maine, 1917, authorizes the creation of corporations without capital stock.

CHAPTER 144.

An Act additional to Revised Statutes Chapter fifty-one relating to corporations.

Chapter fifty-one of the Revised Statutes is hereby amended by adding at the end of said chapter five new sections to be sections one hundred fifteen, one hundred and sixteen, one hundred and seventeen, one hundred and eighteen and one hundred and nineteen, and to read respectively as follows:

Section 115. Upon the formation of any corporation other than a corporation for banking, insurance, or intended to derive profit from the loan or use of money, or a corporation under the jurisdiction of the public utilities commission the certificate of incorporation may provide for the issuance of the shares of stock of such corporation, other than preferred stock having a preference as to principal, without any nominal or par value by stating in such certificate:

(a) The number of shares that may be issued by the corporation, and if any of such shares be preferred stock, the preferences thereof. If such preferred stock or any part thereof shall have a preference as to principal, the certificate shall state the amount of such preferred stock having such preference, the particular character of such preferences, and the amount of each share thereof, which shall be five dollars or some multiple of five dollars, but not more than one hundred dollars.

(b) The amount of capital with which the corporation will carry on business, which amount shall be not less than the amount of preferred stock, if any, authorized to be issued with a preference as to principal, and in addition thereto a sum equivalent to five dollars or to some multiple of five dollars for every share authorized to be issued other than such preferred stock; but in no event shall the amount of such capital be less than one thousand dollars.

Such statements in the certificate shall be in lieu of any statements now or heretofore prescribed by law as to the amount of its capital stock or the number of shares into

which the same shall be divided, or of the par value of such shares.

Each share of such stock without nominal or par value shall be equal to every other share of such stock, subject to the preference given to the preferred stock, if any, authorized to be issued. Every certificate for such shares without nominal or par value shall have plainly written or printed upon its face the number of such shares which it represents and the number of such shares which the corporation is authorized to issue, and no such certificate shall express any nominal or par value of such shares. The certificates for preferred shares having a preference as to principal shall state briefly the amount which the holders of each of such preferred shares shall be entitled to receive on account of principal from the surplus assets of the corporation in preference to the holders of other shares, and shall state briefly any other rights or preferences given to the holders of such shares.

Such corporation may issue and may sell its authorized shares, from time to time, for such consideration as may be prescribed in the certificate of incorporation, or as from time to time may be fixed by the board of directors pursuant to authority conferred in such certificate, or if such certificate shall not so provide, then by the consent of the holders of two-thirds of each class of shares then outstanding given at a meeting called for that purpose in such manner as shall be prescribed by the by-laws. Any and all shares issued as permitted by this section shall be deemed fully paid and non-assessable and the holder of such shares shall not be liable to the corporation or to its creditors in respect thereof.

Section 116. No corporation formed pursuant to section one hundred and fifteen hereof shall begin to carry on business or shall incur any debts until the amount of capital stated in its certificate of incorporation shall have been fully paid in money or in property taken at its actual value. In case the amount of capital stated in its certificate of incorporation shall be increased as hereinafter provided, such corporation shall not increase the amount of its indebtedness then existing until it shall have received in money or property the amount of such increase of its stated capital. The directors of the corporation assenting to the creation of any debt in violation of this section shall be liable jointly and severally for such debt; but no action shall be brought under the foregoing provision of this section unless within one year after the debt shall have been incurred the creditor shall have

served upon the director written notice of intention to hold him personally liable for such debt. Any director who, because of any such liability under this section, shall pay any debt of the corporation, shall be subrogated to all rights of the creditor in respect thereof against the corporation and its property and also shall be entitled to contribution from all other directors of the corporation similarly liable for the same debt and the personal representative of any such director who shall have died before making such contribution.

No such corporation shall declare any dividend which shall reduce the amount of its capital below the amount stated in the certificate as the amount of capital with which the corporation will carry on business. In case any such dividend shall be declared, the directors in whose administration the same shall have been declared, except those who may have caused their dissent therefrom to be entered upon the minutes of such directors at the time or who were not present when such action was taken, shall be liable jointly and severally to such corporation and to the creditors thereof to the full amount of any loss sustained by such corporation or by its creditors respectively by reason of such dividend.

Section 117. Any corporation formed pursuant to section one hundred and fifteen may amend its certificate of incorporation so as to increase or to reduce the number of shares which it may issue, or so as to increase or to reduce the amount of its stated capital, by filing, in the secretary of State's office, a certificate of amendment under seal executed by its president or a vice-president and by its clerk or its treasurer, stating the amendment proposed and that the same has been duly authorized by a vote of a majority of the directors and also by the vote of the holders of at least three-fifths of the outstanding shares of each class issued by the corporation, at a meeting of the stockholders called for the purpose, and by filing with such certificate of amendment a copy of the proceedings of such meeting, made, signed, verified and acknowledged by the president or a vice-president and by the clerk or the treasurer of the corporation; but an amendment cannot be made under this section unless as so amended the certificate of incorporation could lawfully have been filed under section one hundred and fifteen of this chapter. In case of a reduction of the amount of capital of a corporation, a certificate setting forth the whole amount of the ascertained debts and liabilities of the corporation shall be made, signed, verified and acknowledged by the president or a vice-president and by the clerk or the treasurer

of the corporation and shall be filed with the certificate of amendment; and such certificate of amendment shall have endorsed thereon the certificate of the attorney general that he has received satisfactory proof that as so stated the reduced amount of capital is sufficient for the proper purposes of the corporation and is in excess of its ascertained debts and liabilities.

Section 118. For the purpose of any rule of law or of any statutory provision other than the foregoing sections one hundred and fifteen, one hundred and sixteen and one hundred and seventeen or of determining the amount to be paid to the treasurer of State for the use of the State as provided in section nine of this chapter, or of determining the amount of the annual franchise tax as provided in section eighteen of chapter nine of the Revised Statutes, but for no other purpose, shares without nominal or par value shall be assumed to be of the par value of one hundred dollars each.

Section 119. In case the certificate of organization of a corporation formed pursuant to section one hundred and fifteen hereof shall provide for an issue of preferred stock and shall also provide that such stock may be called in and retired at any price stated in the provisions describing the preferences of such shares, such preferred stock shall not be thus called in or retired if thereby the property and assets of the corporation shall be reduced below the amount stated in the certificate of organization or fixed in accordance with the provisions of section one hundred and seventeen, as the capital with which the corporation will carry on business, nor shall such preferred stock be thus called in or retired if thereby the property and assets of the corporation shall be reduced below the amount of its outstanding debts and liabilities.

In case the certificate of organization of any corporation organized under section seven of this chapter shall provide for an issue of preferred stock and shall also provide that such stock may be called in and retired at any price stated in the provisions describing the preferences of such shares, such stock shall not be thus called in or retired if thereby the property and assets of the corporation shall be reduced below the amount of its outstanding debts and liabilities.

Any officer or member of a corporation who votes for or aids in the calling and retiring of preferred stock in violation hereof shall be fined not exceeding two thousand dollars and imprisoned less than one year; and all sums received for such stock so called in and retired in violation hereof may be recovered by any creditor of the corporation in an action on the case.—(Approved March 31, 1917.)

PREFACE TO THIS EDITION.

The first edition of this work was published ten years ago. Since then a number of changes have been made in the corporation laws of Maine by the Legislature and the Supreme Judicial Court has handed down several far reaching decisions interpreting the Statutes. But more especially the Legislature of Maine, at a special session held in the fall of 1916, has adopted a new revision of the Statutes which gives new chapter and section numbers to all the old Statutes. No work now published contains these references and the time seems opportune for a new edition.

The author of this edition was associated for seventeen years with the late Mr. Heath and during that time had charge of the corporation department of the law firm of Heath & Andrews. It seems proper and fitting, therefore, that he should edit such changes and additions as are necessary.

Throughout the text of the book will be found references to the new chapter and section numbers of the new Revised Statutes and also to all decisions of the Supreme Court of Maine relating to business corporations to November 1, 1916.

A number of new forms have been added and about fifty pages of new text on such topics as, "Maine Corporations Doing Business in Other States," "Foreign Corporations in Maine," "Inheritance Tax as Applied to Corporate Stock," "Issuing Bonds," etc.

No attempt has been made to depart from the plan of the former work but rather to follow its concise, orderly arrangement.

It is hoped that not only will its simple analysis of the Statute and complete forms be helpful to the busy lawyer and to the corporate officer, but that counsel for Maine corporations doing business in other states will find it valuable as a hand book.

CHARLES L. ANDREWS.

Augusta, Maine,

November 1, 1916.

PREFACE TO FIRST EDITION.

The author has endeavored to present the law and procedure governing business corporations in the State of Maine, seeking such brevity and compactness as the subject permitted. The statutes of this state are simple and easily understood. The practice is equally simple. Wherever interpreted by the courts or by state officials, the text calls due attention to the fact.

The present volume includes a digest of the entire law governing business corporations in Maine as found in the statutes and the decisions of the courts, the forms in general use, and a reprint of the statutory law as in force on January 1, 1907. It is hoped that the work may be a satisfactory manual of corporate organization and management for the State of Maine, so far as business corporations are concerned.

No attempt has been made to inject into the discussion more of the law of corporations than was necessary to make plain the statutory rules of the state. The authoritative cases have been cited and commented upon. The forms presented are drawn mainly from the thirty years' experience of the author, and have met the approval of eminent corporation counsel throughout the country with whom he has done business. None are academic. All have been used.

The forms, as printed, follow the modern approved rule of filling the blanks with fictitious names, dates, etc., presenting them to the reader as precedents with no blanks to confuse the mind. They are copies of completed instruments. It is hoped that this will contribute to clearness and safety in their practical use.

The author is indebted to his partner, Mr. Charles L. Andrews, whose long experience in corporate organization and management has been of invaluable assistance. This little work is submitted to a generous profession, all of whom are conscious that it is difficult to escape error in the strenuous life of the modern lawyer, today a factor in the world of business. He hopes it may tend to make easier the daily burden of all that may have occasion to use it.

HERBERT M. HEATH.

Augusta, Maine,

January 1, 1907.

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As Revised to January 1, 1917.

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MAINE CORPORATIONS.

PART I.—PROCEDURE.

CHAPTER I.

CORPORATION LAWS.

§ 1. Creation of Corporations.

In the United States, in so far as the statutes are concerned, all legislative power is lodged in the state legislatures, and corporations, therefore, can be created only by or under an act of the legislature. *Hoadley v. Essex County Commissioners*, 105 Mass. 519. A state legislature has the inherent power to create any corporation it pleases, subject only to such restrictions as are to be found in the federal and state constitutions. *Penobscot Boom Corporation v. Lamson*, 16 Maine 224.

§ 2. Constitutional Provisions.

The Maine constitution provides as follows:

"Corporations shall be formed under general laws and shall not be created by special acts of the legislature, except for municipal purposes and in cases where the objects of the corporation cannot otherwise be attained, and however formed they shall forever be subject to the general laws of the state." (Art. IV, Part III, Sec. 14.) It has been settled in *Taylor v. Portsmouth, Kittery & York Street Railway*, 91 Maine 193, that if the legislature sees fit to grant a special charter to a corporation which might have been organized

under the general law, the validity of such act of incorporation can be inquired into only by the state. It is a *de facto* corporation at least. A charter obtained under the general law may be amended by special act of the legislature. *State v. Maine Central Railroad Company*, 66 Maine 488. "The legislature shall, from time to time, provide as far as practicable, by general laws, for all matters usually appertaining to special or private legislation." (Constitution, Art. IV, Part III, Sec. 13.)

§ 3. Statutes.

Under the last quoted section the legislature has enacted general statutes for the organization and management of various classes of corporations. Prior to the revision of the statutes in 1903, the statutes relating to the organization and management of the ordinary business corporation were included in two different chapters—Chapter 46 on corporations generally, and Chapter 48 on manufacturing corporations organized under the general law. In the revision of 1903 these two chapters were united as Chapter 47, which in the revision of 1916 became Chapter 51.

This treats generally of the organization and management of all business corporations, whether created by act of the legislature or under the general corporation law. There are other chapters relating to the formation of various classes of corporations, as follows: Chap. 52, Savings Banks, Trust and Banking Companies, Loan and Building Associations, Foreign Investment Corporations; Chap. 53, Insurance Companies; Chap. 54, Fraternal Beneficiary Associations; Chaps. 56, and 57, Steam Railroads; Chap. 58, Street Railroads; Chap. 59, Steam Navigation Companies; Chap. 60, Telegraph and Telephone Companies, Gas and Electric Light and Power Companies; Chap. 61, Aqueduct and Water Companies; Chap. 63, Libraries and Charitable Societies.

§ 4. The General Corporation Statute, Chapter 51.

"This chapter applies to all corporations organized by special acts of the legislature or under the general laws of the state, except so far as it is inconsistent with such special acts or with public statutes concerning particular classes of corporations." (Ch. 51, § 1.) Corporations may be formed under Chapter 51 "to carry on any lawful business anywhere, including corporations for manufacturing, mechanical, mining or quarrying business and also corporations whose purpose is the carriage of passengers or freight, or both, upon the high seas, or from port or ports in this state to a foreign port or ports, or to a port or ports in other states, or the carriage of freight or passengers, or both, upon any waters where such corporations may navigate." (Ch. 51, § 7.)

The following, however, are excepted from the above provisions, "Corporations for banking, insurance, the construction and operation of railroads or aiding in the construction thereof, and the business of savings banks, trust companies or corporations intended to derive profit from the loan or use of money, and safe deposit companies, including the renting of safes in burglar-proof and fire-proof vaults." (Ch. 51, § 7.) To this list should be added, although not expressly excepted in this section, telegraph, telephone, gas, electric light, electric power and water companies, severally intending to do business as public service corporations in the state of Maine.

The above list of exceptions relates, however, to corporations formed to exercise such corporate purposes in the state of Maine; but corporations may also be formed under Chapter 51, "to exercise the following corporate purposes in other states and jurisdictions, namely: the construction and operation of railroads or aiding in the construction thereof, telegraph or telephone companies and gas or electrical companies, and in all such cases the articles of agreement and certificate of organization shall state that such business is to be carried on only in states and jurisdictions when and where permissible under the laws thereof." (Ch. 51, § 7.)

When it is desired to organize a corporation for the purpose of carrying on in states other than the state of Maine any of the purposes excepted as above, it is necessary to add at the conclusion of the statement of purposes in the certificate of organization the following: "But the foregoing purposes of engaging in the construction and operation of railroads or aiding in the construction thereof (add also telegraph, telephone, gas or electrical companies if they are also included in the purposes) shall be exercised and such business shall be carried on only in other states and jurisdictions and when and where permissible under the laws thereof." If such excepted companies, that is, railroads, telegraph or telephone companies, gas or electrical companies, are organized to do business in Maine, they must be organized under the provisions of the special chapters mentioned in the preceding paragraph, but if organized to do business only in other states and jurisdictions they are not subject to the requirements and provisions of the special chapters, but only to the provisions of Chapter 51—the general corporation law. (See § 17 following.) It is believed, however, that the prohibition against organizing electrical companies under Chap. 51 applies only to such companies as are to "distribute and supply" electricity to the public, or in other words public service corporations, and that companies can be organized under the provisions of Chap. 51 and not Chap. 54 for making, generating and selling electricity for power or manufacturing purposes alone, as in *Brown v. Gerald*, 100 Me. 351. Such company would have no right of eminent domain, no right to use the public streets and no other rights not possessed by any manufacturing company.

The use of the term "electrical companies" in the above quoted statute is perhaps unfortunate and should be construed as though reading "electrical public service companies."

Constructing a roadbed upon its own land on which it places sleepers and rails for the transportation of its own lumber from its own lands does not make it a railroad company. An individual can lay a railroad track upon his own

land for his own use without obtaining a railroad charter. *Palangio v. Lumber Co.*, 86 Me. 315.

But while railroads, telegraph or telephone companies and gas or electrical companies may be thus organized under the general law to do business wholly outside of the state of Maine, corporations cannot be organized under the general corporation law to conduct, either in or out of the state, the business of banking, insurance, savings banks, trust companies, or that of corporations intended to derive profit from the loan or use of money, and safe deposit companies, including the renting of safes in burglar-proof and fire-proof vaults, and no certificate of organization of a corporation under the general corporation law should contain any of these purposes, expressly or by implication.

§ 5. Common Law.

The rules of the common law govern in all cases not provided for by statute. As they are practically the same in all the states only incidental mention will be made of them in this volume.

CHAPTER II.

EXPENSES OF INCORPORATION.

§ 6. Organization Fees.

The fees to be paid at the time of filing and recording the certificate of organization consist of fees to the Attorney General, the Register of Deeds, the Secretary of State and the State Treasurer.

§ 7. Fees of Attorney General.

The Attorney General is required to examine every certificate of organization and certify that it is properly drawn and signed and conformable to the constitution and laws. He is entitled to a fee of \$5.00, payable in advance. (Ch. 51 § 9. Ch. 118, § 15.)

§ 8. Fees of Register of Deeds.

After the certificate of organization has been approved by the Attorney General it is recorded by the Register of Deeds, in the county where the corporation is located, who compares and certifies a copy thereof to be filed in the office of the Secretary of State. The fee of the Register of Deeds for such record and copy is \$5.00, payable in advance. (Ch. 51, § 9. Ch. 118, § 18.)

§ 9. Fees of Secretary of State.

A copy of the certificate of organization, certified by the Register of Deeds, is next filed in the office of the Secre-

tary of State, who enters the date of filing thereon and on the original certificate, and records said copy in a book kept for that purpose. The fee is \$5.00, payable in advance. (Ch. 51, § 9. Ch. 118, § 13.) For all certified copies the Secretary of State is entitled to a fee at the rate of twelve cents a page, and for a certificate with the seal of the state, \$1.00. (Ch. 118, § 13.)

§ 10. Organization Tax.

Before the certificate of organization is filed in the office of the Secretary of State, the corporation must pay to the Treasurer of State, for the use of the state, the following sums: When the amount of the capital stock does not exceed ten thousand dollars, \$10.00; when it exceeds ten thousand dollars and does not exceed five hundred thousand dollars, \$50.00; when it exceeds five hundred thousand dollars, \$10.00 for each one hundred thousand dollars of the capital stock. (Ch. 51, § 9.) It is usual to forward this organization fee to the Secretary of State with the certificate, in which case that official sees that the State Treasurer receives the fee.

§ 11. Organization Fee of Corporations Organized Under Special Chapters.

When corporations are organized to do business in this state for purposes of banking, insurance, railroads, trust companies, etc., telegraph and telephone companies, electric light and gas companies, water companies, or other corporations authorized to exercise the right of eminent domain, the fees of the Register of Deeds and Secretary of State are the same as in the case of business corporations, \$5.00 each, but the statute provides that no such certificates "shall be received and filed by the Secretary of State except upon payment to him of \$25.00, if the capital stock does not exceed five thousand dollars; \$50.00 if the capital stock exceeds five thousand dollars and does not exceed ten thousand dollars; one hundred dollars if the capital stock exceeds ten thousand

dollars and does not exceed fifty thousand dollars; two hundred dollars if the capital stock exceeds fifty thousand dollars and does not exceed one hundred thousand dollars; \$75.00 upon every one hundred thousand dollars or fraction thereof in excess of one hundred thousand dollars, if the capital stock exceeds one hundred thousand dollars, which sum is to be paid by the Secretary of State to the Treasurer of State for the use of the State." (Ch. 51, § 6.) This section does not apply to railroad, telegraph, telephone, gas or electrical companies, organized under the provisions of section 7 to do business only in other states and jurisdictions. Such companies pay the same fee to the state as do business corporations under section 9.

§ 21. Table of Fees.

For convenience in estimating the expense of organization of Maine corporations, the following table has been prepared, showing the amount of organization tax payable to the state for various amounts of capital stock, and also the annual franchise tax payable by the same companies. In estimating the total fees of organization the sum of \$15.00 should be added to the organization tax for fees of Attorney General, Register of Deeds and Secretary of State.

EXPENSES OF INCORPORATION

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CAPITAL STOCK	State Treasurer's Fee at Organization	Annual Franchise Tax Thereafter
\$ 10,000 or less.....	\$ 10.00.....	\$ 5.00
to		
50,000.....	50.00.....	5.00
to		
200,000.....	50.00.....	10.00
to		
500,000.....	50.00.....	50.00
to		
600,000.....	60.00.....	75.00
to		
700,000.....	70.00.....	75.00
to		
800,000.....	80.00.....	75.00
to		
900,000.....	90.00.....	75.00
to		
1,000,000.....	100.00.....	75.00

Thereafter for each additional \$100,000 or fraction thereof the fee to the State Treasurer is \$10.00 additional, and for each additional \$1,000,000 or fraction thereof the annual franchise tax is \$50.00 additional.

CHAPTER III.

CERTIFICATE OF ORGANIZATION.

§ 13. Incorporators.

Three or more persons may associate themselves together by written articles of agreement for the purpose of forming corporations to carry on any lawful business anywhere, subject to the exceptions mentioned in section 4 preceding. There is no requirement that these persons shall be residents of the state or of the United States. It is no objection in time of peace that these associates are aliens.

While the statute does not in express terms prohibit a minor from becoming an incorporator, yet as the certificate of organization is in the nature of a contract between the incorporators and the state, the rules regulating the capacity of a minor to make contracts would prevent him from becoming an incorporator; although the corporation would still have a legal existence, if one of the persons who organized it should be a minor, as the contracts of infants are voidable only and not void. Under the statutes of Maine, married women may make contracts. (Ch. 66.) Practically, therefore, the only persons excluded from acting as incorporators are minors and persons non compos mentis.

It is not necessary that the associates should be actual subscribers for stock at the time of signing the articles of agreement, but the statute provides that the certificate of organization prepared at or after the first meeting shall set out the names and residences of the owners of the stock (Ch. 51, § 9), which includes by implication the number of shares subscribed by each owner. It is not necessary that any subscriber should own more than one share.

A majority of the directors elected at the first meeting must sign and acknowledge the certificate of organization. This avoids the inconvenience which sometimes arises in states where all the incorporators must sign and acknowledge the certificate.

As Maine is regarded as one of the favored states by promoters residing in other states, a large number of corporations are organized under the laws of Maine for corporators residing elsewhere. To avoid the expense and inconvenience of coming to Maine in person to organize such corporations, because no stockholders' meeting can be held outside the state, it has become a frequent practice to use temporary incorporators, or as they are sometimes termed, "dummy" incorporators. This practice is common in other states. While it is sometimes criticised by text-books and its legality has never been passed upon by the courts of Maine, there is no doubt that the practice will be upheld. In *Dickerman v. Northern Trust Company*, 176 U. S. 181, it was held, "The company did, in fact, go through the form of an organization under the laws of the state of New Jersey, and while the first board of directors seem to have been mere tools in the hands of the New York firm, with no real interest in the company, they appear to have conformed to the letter of the law, and until formally dissolved the corporation had a legal existence." Sometimes all the incorporators are temporarily employed as such, but more frequently a majority of the incorporators are temporary, and the remaining incorporators living out of the state act in Maine through powers of attorney.

If a majority of the incorporators are personally present at the first meeting for organization, and the certificate of organization is signed in person by the president, treasurer and a majority of the directors elected at such first meeting, the fact that a minority of the incorporators were not present and took part in the meeting only by power of attorney, will not invalidate the organization of the corporation, since the statute provides "words giving authority to three or more persons authorize a majority to act, when the enactment does not otherwise determine." (Ch. I, § 6, Par. 3.)

As shares of stock in a Maine corporation subscribed for by the incorporators need not be paid for either in full or in part at the time of organization, it is usual when such temporary incorporators are used, for them to subsequently assign to the real stockholders the temporary stock subscriptions, and the stock is then paid for by and issued to the real owners.

§ 14. Certificate of Organization.

No charter is issued by any officer of the state to a Maine corporation organized under the general corporation law, but the certificate of organization prepared and signed by the president, treasurer and a majority of the directors is regarded as an application to the state for the franchise to act as a corporation.

Frost on Incorporation and Organization of Corporations, the last edition, says that the State of Maine "seems to contemplate the corporate existence shall commence before filing of articles of incorporation with any official, either state or county." This is not true because the statute provides that when this certificate has been approved by the Attorney General, recorded in the registry of deeds of the county where the corporation has its principal office, and a copy thereof certified by such Register of Deeds is filed in the office of the Secretary of State, "the signers of said articles and their successors and assigns shall be a corporation the same as if incorporated by a special act with all the rights and powers, and subject to all the duties, obligations and liabilities provided by this chapter." (Ch. 51, § 11.) This clearly recognizes the legal right of incorporation by temporary incorporators to be followed by assignment to the parties in interest.

§ 15. Contents of Certificate of Organization.

The certificate of organization must set forth the name and purposes of the corporation, the amount of capital stock,

the amount already paid in, the par value of the shares, the names and residences of the owners, the name of the county where it is located, the number and names of the directors, and the name and residence of the clerk. These must all appear, or the certificate will not be approved by the Attorney General. Only one copy need be made and executed, which after full record is returned to and retained by the corporation itself.

§ 16. Name.

The statute provides that at the first meeting the associates shall adopt a corporate name (Ch. 51, § 8,) and the certificate of organization subsequently prepared by the officers shall set forth the name of the corporation. (Ch. 51, § 9.) There are no other provisions of statute as to name except Chapter 52, Section 5, the chapter relating to banks which provides that a corporation shall not use the words, Banking, Savings, Trust, Insurance, etc., as part of its name and provides a penalty for so doing.

There is no special statute prohibiting the use of any name already adopted and in use by another Maine corporation, but the state officials would undoubtedly decline to approve and record the certificate of a new corporation having a name already in use in Maine. It has been held by the courts of Massachusetts that the certificate of organization when duly approved and recorded is conclusive upon the right of that corporation to be such under the name designated therein (*Boston Rubber Shoe Co. v. Boston Rubber Co.*, 149 Mass. 436), but this is a technical course of reasoning adopted by no other state, and undoubtedly if such name were adopted with any fraudulent intent or if its use tended to result in producing public confusion between the two corporations, the use of the name would be enjoined. *Plant & Seed Co. v. Michel*, 23 Mo. App. 579.

As the supreme court of Maine has held that the certificate of organization is a contract between the state and the incorporators, it would seem probable that it would hold the

grant to another corporation of the right to use a similar name to be an impairment of the obligation of the previous contract, and so subject to injunction. It is not necessary that the word "corporation" or "company" or "incorporated" should be a part of the corporate name, as it is in some states like New York.

The statutory name may be changed by the stockholders at any regular or special meeting, when notice of such action is contained in the call of the meeting. When such vote is passed, the proceedings of such meeting certified by the clerk thereof should be returned to the office of the Secretary of State to be recorded by him, and when so recorded, the name is deemed to be changed. This will not, however, defeat any action already brought against the corporation by its former name. (Ch. 51, § 50.) The fee payable to the Secretary of State for such record is \$5.00. (Ch. 118, § 13.)

§ 17. Corporate Purposes.

The certificate of organization must set forth the purposes of the corporation. (Ch. 51, § 9.) Corporations may be organized under the general law "to carry on any lawful business anywhere, including corporations for manufacturing, mechanical, mining or quarrying business, and also corporations whose business is the carriage of passengers or freight upon the high seas, or from port or ports in this state to a foreign port or ports, or to a port or ports in other states, or the carriage of freight or passengers or both upon any waters where such corporations may navigate" (Ch. 51, § 7); but there are certain exceptions to this rule. (See § 4, *ante*.)

Some states require that there shall be but one particular kind of business set out in the purposes, others that the name shall indicate the kind of business to be transacted. But in Maine there is no limitation upon the number of objects which may be included in the statement of purposes, and any number of lawful purposes may be included in a single certificate. While brevity is desirable, care should be taken

that the statement of purposes should include every kind of business which the corporation is expected to carry on. Additional purposes cannot afterwards be added except by special act of the legislature. The purposes should be stated in the fullest and clearest manner possible.

But if the corporate purposes are stated more broadly than would be permissible to a domestic corporation under the laws of any other state in which it seeks to do business, the charter will be limited by the local statute. For illustration: A Maine corporation may hold real estate without limit as to extent or tenure. If it seeks to do business in a state where a domestic corporation can hold real estate only in a limited amount or for a term of years, the corporation will be admitted to do business, but its powers will be construed as if limited by such local statute. *State v. Cook*, 171 Mo. 348.

It will be noticed that the statute broadly provides that corporations may be organized to carry on any lawful business "anywhere." The use of this word "anywhere" obviates the necessity of specifying in the statement of purposes that the corporation shall have the right to do business outside the state or of mentioning any particular place where it shall transact business. Since the decision of the Supreme Court of the United States, in *Pinney v. Nelson*, 183 U. S. 144, it is imprudent to name in the certificate any particular state or country in which the business of the corporation is to be carried on.

In *Pinney v. Nelson*, a corporation was created in Colorado with the statement in its charter that its business was to be carried on in California, where the law provided that the liability of stockholders in foreign corporations, doing business in that state, should be the same as that of stockholders in domestic corporations. The court held that having framed its charter with special reference to California the stockholders must be presumed to have agreed to accept the features of the laws of that state.

Even if the statement of purposes includes one or more of the kinds of business excepted by the statute, and the cer-

tificate provides that such business is to be carried on in other states and jurisdictions, it is still wise to follow closely the language of the statute and not to mention such other state or states by name. *Pinney v. Nelson* rests upon the principle that by naming a particular state in the certificate the stockholders have by their charter agreed to adopt all the laws of such state applicable to the relations between the stockholders and the citizens of such state. Under this rule troublesome questions arise, particularly in states imposing double liability. But by adding the general expression found in the statutes (Ch. 51, § 7), "to be carried on only in other states and jurisdictions and when and where permissible under the laws thereof," no particular state is mentioned and the application of the rule in *Pinney v. Nelson* avoided. Nor can it be held that the state forces into another jurisdiction one of its own corporations, because the power is given to carry on its business in other states and jurisdictions only "when and where permissible under the laws thereof," thus recognizing the general rule of law affecting the admission of foreign corporations.

§ 18. Not Necessary to State Corporate Powers.

It is necessary to state the purposes only. It is unnecessary and without legal effect to state the corporate powers. Not being authorized by statute they are inoperative. In New Jersey and Delaware, for instance, special powers are conferred upon condition that they are inserted in the certificate of incorporation.

When a Maine corporation is organized with the intention of operating in other states where the people with whom it will do business are accustomed to such full charters, its promoters frequently prefer to load the certificate of organization with statements of powers on the ground that in their absence it might be thought such powers were lacking. In such cases they can be safely inserted if not contrary to law or public policy. As each stockholder purchases his stock with notice of the contents of the certificate he cannot

object to stipulations to which he has therein legally assented. *Cummings v. Webster*, 43 Me. 192. In Maine the statute provides that the certificate of organization when filed is the equivalent of a special charter (Ch. 51, § 11), hence the courts of the state will construe such certificate as having attached to it the common law power to do any act which an individual could do, and to use all the means suitable or proper to accomplish the corporate purposes.

§ 19. Right to Organize in Maine, to do Business in Other States.

Business men often hesitate to incorporate under the laws of another state, when all the business is in fact to be carried on within the state of their actual residence, because of severe criticisms in some text-books and like expressions in early judicial opinions. That the text-books writers are not justified in their criticisms will appear when their personal opinions are tested by the law as settled. Mr. Purdy in his "Beach on Private Corporations," § 598, said: "Incorporation in one state, with intent to transact all its business in another, is a fraud, and will subject all parties to it to personal liability as partners," but one may question whether full study was made of the cases cited to support the text when the same author says, § 675, "Indeed, a company may be organized under the laws of one state for the express purpose of doing business in another, if only its corporate organization be maintained and directed from the state of its origin." The late Judge Seymour D. Thompson, in his *Commentaries on the Law of Corporations*, Vol. VI, § 7895, said: "The conclusion is that the 'tramp corporation' should not be judicially recognized, but that its members should be held *liable* upon their contracts as *partners*, and upon their torts as *joint tort-feasors*."

Upon the other hand, Professor Beale, Bussey Professor of Law in Harvard University, in his work on *Foreign Corporations*, said, § 114: "The mere fact that at the time of forming a corporation it is intended to do business in a

foreign state, or that no business (except the formation of the corporation) is in fact done in the incorporating state, does not render the corporation a nullity, or prevent the corporation from acting in a foreign state. It is no fraud or evasion of the laws of a state for its citizens, intending to act only in their own state, to form themselves into a corporation under the laws of another state." With authors of eminence drawing different conclusions from the same cases, the legal truth and the soundness of their reasoning is to be found only by an examination of the cases themselves.

Land Grant Rwy. Co. v. Coffey County, 6 Kan. 245, is the case most often quoted in opposition. By way of *dictum* the court said: "No rule of comity will allow one state to spawn corporations and send them forth into other states to be nurtured, and do business there, when said first mentioned state will not allow them to do business within its own boundaries." But it appears that Pennsylvania, the home state, forbade the corporation to establish or maintain an office within that state. With no home there is no corporation. A similar analysis of all the cases apparently contrary to this principle will show that the corporation in question had failed in some way to become legally organized as a corporation in its home state.

On the principle of *Beigner & Engel Brewing Co. v. Dreyfus*, 172 Mass. 154, that a corporation has its domicile in the state that created it, its place of residence is there and can be nowhere else. The right to organize in one state with the intention of doing business in another was later confirmed in Kansas, in *State v. Topeka Water Co.*, 61 Kan. 547.

It has been also sustained in the following leading cases:

Saltmarsh v. Spaulding, 147 Mass. 224.

Missouri Lead Co. v. Reinhard, 114 Mo. 218.

State v. Cook, 181 Mo. 596.

Demarest v. Flack, 128 N. Y. 205.

North & South Rolling Stock Co. v. People, 147 Ill. 234.

State v. Taylor, 25 Ohio St. 279.

Minnesota County v. Denslow, 46 Minn. 171.

Moxie Nerve Food Co. v. Baumbach, 32 Fed. Rep. 205. (A Maine corporation.)

Irvine Co. v. Bond, 74 Fed. Rep. 849.

Canada Southern Rwy. Co. v. Gebhard, 109 U. S. 527.

With the courts of the country now in entire harmony, incorporators can feel safe in accepting a charter abroad, even if to be used wholly within the state of their actual residence, if the statutes of the incorporating state are strictly followed, a clerk's office or some other legal home there maintained, and the organization meeting held within the limits of the state so creating the corporation. The corporate home within the sovereignty of the creating state is essential. Whether the holding of an organization meeting beyond the limits of such state by express permission of such state is valid except as against such state is still questionable. The foregoing rule confines itself to the lines of present safety. That incorporators organize abroad is no evasion of local law or fraud upon their state. Once a corporation anywhere, always a corporation everywhere. Compliance with law, without fraud, is sufficient. Incorporators so organized incur no risk of being declared partners.

§ 20. Amendment of Corporate Purposes.

There is no provision of statute authorizing any amendment of the purposes of a Maine corporation, except by special act of the legislature. While there is a broad statute providing that "whenever a corporation shall make a change in its charter or certificate of organization in any manner for the more convenient transaction of its business, it shall forward a notice of such transaction to the Secretary of State, who shall record the same in a book kept for that purpose" (Ch. 51, § 48), this is construed by the Attorney General as applying to those changes expressly authorized by statute, such as change of name, amount of capital, par value of shares, etc., and not as applying to the statement of purposes, and on this ground, which is undoubtedly correct, he refuses

to approve any amendment of the statement of purposes. Such amendments are and always will be readily and inexpensively granted by the legislature, by special act, whenever desired. Minority stockholders, investing in a given enterprise, are guaranteed against changes of business at the will of the majority, a feature often recognized as an element of strength in a Maine corporation.

§ 21. Capital Stock.

The certificate of organization should set forth the amount of capital stock (Ch. 51, § 9), as fixed by the associates at their first meeting. It must not be less than one thousand dollars. (Ch. 51, § 8). There is no maximum limit. It should be borne in mind, however, that the amount of organization fee paid the state and also the amount of annual franchise tax are governed by the amount of capital stock authorized, and not by the amount paid in or used in the business. The amount of capital stock can be increased readily. It is, therefore, advantageous at organization to fix the amount of stock at a reasonable figure, and not to begin business with an inflated capital with the expectation that the additional stock may be sold to meet the needs of an increasing business.

Two or more kinds of stock may be created with such classes and designations, preferences, voting powers, restrictions or qualifications as may be determined upon. (Ch. 51, § 53.) The statutory provision is very broad and covers every kind of stock that can be desired, such as preferred stock, guaranteed stock, founders' shares, etc. The respective rights of these various classes should be carefully provided for in the by-laws. Occasionally they are set out in the statement of purposes, but this is not the proper place for them, and whenever so included in the purposes it is usually with the express intention that no amendment with relation to them shall ever be made, because, as stated in the previous section, the purposes cannot be amended.

Nor is it necessary that the conditions of their issue or the fact that any particular amount or class of stock is to be issued for property should be stated in the certificate of organization. . . These various kinds and classes of stock may be also created at any later period by vote of the stockholders, at a meeting duly called for that purpose.

The amount of capital stock may be increased at any time at any meeting of the stockholders called for the purpose, by a majority vote of the stock issued. When such vote is passed the corporation must file a certificate thereof with the Secretary of State, within ten days thereafter, and the increase will not take effect until such certificate is filed and the additional fees paid to the Treasurer of State. (Ch. 51, § 41.) The fee of the Secretary of State for recording such certificate is five dollars, payable in advance. (Ch. 118, § 13.) When the capital stock is increased from ten thousand dollars to a sum not exceeding five hundred thousand dollars, the fee payable to the Treasurer of State is \$40.00; if to an amount exceeding five hundred thousand dollars, the fee is \$10.00 for each one hundred thousand dollars in excess of five hundred thousand dollars. (Ch. 51, § 41.)

The capital stock may also be readily diminished. If such diminution is desired on account of losses or depreciation of property, resulting in an impairment of capital, a two-thirds vote of the outstanding stock is required at a meeting called for the purpose. In such case the par value of all the shares, issued or to be issued, is reduced proportionately. (Ch. 51, § 44.) After the stock is so reduced the corporation may, from time to time, issue new shares of the reduced par value, until the gross capital equals the gross capital authorized by the articles of association before such reduction. When the amount of capital stock is so reduced, any stockholder who has not agreed thereto may, within thirty days after the reduction, file a bill in equity in the county in which the corporation has its established place of business, for a revision of the proceedings, so that such reduction shall not exceed the actual impairment of capital. (Ch. 51, § 45.)

If the capital is not impaired, but it is simply deemed desirable by the stockholders to decrease the capital stock, they may do so by a majority vote of all the stock issued, at a meeting called for the purpose. In such case each stockholder shall, within three months after the meeting, surrender such a proportion of his stock as the amount of decrease shall bear to the amount of capital stock before the decrease, so that each stockholder shall have the same proportion of the whole capital stock as before. (Ch. 51, § 43.)

Under the act of 1911, which now becomes Ch. 51, § 43, if at the time of such decrease there shall remain in the treasury any unissued capital stock the stockholders need not surrender portions of their stock, but the decrease may be effected by first retiring such unissued capital stock not exceeding the amount of the decrease.

In either case, the corporation must give notice of the change to the Secretary of State within thirty days and pay him a fee of \$5.00. The rights of creditors are not to be affected or prejudiced by any reduction.

§ 22. Amount Paid In.

The certificate of organization should state the amount of capital stock already paid in. (Ch. 51, § 9.) The statute does not require that any amount be paid in at or prior to organization. It is usual to state in the certificate that nothing is paid in. It is not necessary, if any of the stock is paid in, to state how it is paid, or whether in cash or property. In setting out in the certificate the names and residences of the owners, it is not necessary to give the street number. The name of the city or town, and state, is sufficient.

§ 23. Shares.

The certificate of organization should set forth the par value of the shares, and the names and residences of the owners. (Ch. 51, § 9.) No stockholder at organization need subscribe for or own more than one share. It is the common

practice for each stockholder to subscribe for but one share. As at least three persons must associate themselves together to form the corporation, there must be at least three shares subscribed.

There is no statutory provision in regard to the par value of the shares. It may be fixed at any amount desired and may be changed by the stockholders at any subsequent meeting called for that purpose. A certificate of such change, signed by the president or clerk, must be filed in the office of the Secretary of State, whose fee for record is \$5.00. (Ch. 51, § 38.) If there are two or more classes of stock, it is not necessary that they should be of the same par value.

§ 24. Location.

The certificate of organization should set out the name of the county where the corporation is located. (Ch. 51, § 9.) While the statute does not require it, the name of the city or town in which its principal office is located should be set out, but it is not necessary to give any street number. The residence of a corporation is in the state of its creation although it may carry on business in another state. *Squire & Co. v. Portland*, 106 Me. 234. The statutory "location" is simply the county wherein it has its principal place of business and the clerk's records are kept, but a corporation may have its location and clerk's office in one place and its place of business in another.

§ 25. Officers.

The certificate of organization should set forth the number and names of the directors (Ch. 51, § 9), and the name and residence of the clerk. The number of directors must be not less than three, but may be any number more than three as the stockholders may determine. The directors may be divided into classes, if desired, and these classes given any designations the stockholders may wish.

None of the directors or officers, except the clerk, need be residents of the state, but each director must be a stockholder, although it is not necessary that he hold more than one share. The president must be a director, but it is not necessary that the treasurer should be, nor is it essential that either the treasurer or the clerk be stockholders.

The directors and other officers hold office for one year, or, unless otherwise provided by the by-laws, until their successors are elected and qualified.

§ 26. Execution of Certificate.

The president, the treasurer, and a majority of the directors must sign the certificate and make oath to the same before a justice of the peace or notary public. A recent statute, Ch. 298 of the Laws of 1915, now § 9, of Ch. 51, provides that any subscriber who was actually present in the state for meeting of organization may make oath to the certificate outside the state before a notary public or commissioner appointed by the Governor to take acknowledgments of oaths in other states.

This act also settled a question which has heretofore been a doubtful one in the minds of many corporation attorneys by providing that "all certificates heretofore verified outside the state before a notary public or such commissioner, shall be deemed to comply with said section." It will be noted, however, that persons so sworn outside the state must have been actually present at the meeting.

It is not necessary that the clerk sign the certificate of organization.

§ 27. Special Provisions.

The duration of a Maine corporation is unlimited. It is not necessary to state in the certificate of organization the length of time which it shall exist. While many unnecessary provisions are sometimes inserted in certificates of organization, such as, for example, provisions in regard to preferred

stock, cumulative voting, etc., and other features in the nature of corporate powers or regulation, it is better, since there is no statute provision authorizing the same, that such provisions be included in the by-laws. Such features inserted in the certificate beyond the requirements of the statute are without legal effect. The scrivener gains nothing by enumerating corporate powers in a certificate which by statute should be limited to a statement of corporate purposes.

§ 28. Approval.

After the certificate of organization has been executed, it should be sent to the Attorney General for his examination and approval. If he finds it to be properly drawn and signed and conformable to the constitution and laws, he will so certify upon the certificate. (Ch. 51, § 9.) Unless his certificate is obtained, the persons associating themselves together will not become a corporation. *Richmond Factory Assn. v. Clark*, 61 Maine 351. His fee is \$5.00. (Ch. 118, § 15.) The statutes of 1903 make this the duty of the Attorney General. The office of Assistant Attorney General was created by Chapter 162 of the Public Laws of 1905. He has his office at the state capitol in Augusta, and may perform all the duties required of the Attorney General by Chapter 51 of the Revised Statutes. (Ch. 82, § 67.) In practice the Assistant Attorney General examines and approves all corporation certificates. There is no appeal from his decision. Should he hold that the purposes are not conformable to the constitution and laws, it is usually better to redraft the certificate and amend the purposes in accordance with his ruling, but if it becomes a matter of sufficient importance to use the statement of purposes as originally drafted, application may be made to the Supreme Court for a mandamus to compel approval.

§ 29. Recording.

After the certificate of organization has been executed and approved, it must be recorded in the office of the Register

of Deeds of the county where the corporation is located. (Ch. 51, § 9.) The fee of the Register for such record is \$5.00. (Ch. 118, § 18.) The Register minutes the fact of record upon the certificate, and prepares and certifies a copy thereof.

This copy must be filed in the office of the Secretary of State within sixty days after the date of the meeting at which the corporation is organized, or the proceedings will be invalid. The Secretary of State will file this certified copy in his office and record it in a book kept for that purpose, and will enter the date of filing of both the original certificate and the certified copy at the same time. His fee of \$5.00 and the fee of the Treasurer of State must be paid in advance. (Ch. 51, § 9.) The original certificate is returned to the corporation to be kept by it as its original evidence of incorporation, taking the place of the charter issued in many states. Copies of this certificate of organization, certified by the Secretary of State, are issued by him to be used as evidence, or for filing in other states, the fee for which is twelve cents a page. (Ch. 118, § 13.) The fee is the same whether the copy is prepared by the Secretary himself or is previously prepared and forwarded to him to be certified.

CHAPTER IV.

BY-LAWS.

§ 30. In General.

The by-laws of a corporation stand in much the same relation to its certificate of organization as the statutes of a state stand to the state constitution. The certificate of organization is the charter of the company. It contains its purposes or objects. The by-laws define and limit the powers and duties of the directors and officers, and prescribe how the purposes of the corporation are to be accomplished. They should be strictly obeyed. They cannot enlarge the power of the company and enable it to make contracts not authorized by its charter or by law. *Andrews v. Union Mutual Fire Insurance Co.*, 37 Maine 260, or impair, except by mutual consent, rights vested by previous by-laws.

As the by-laws are adopted by the stockholders, they are presumed at all times to know their contents and to be governed accordingly. Ignorance is no excuse. They are equally as binding on all members and others acquainted with their methods of business as any public law of the state. *Cummings v. Webster*, 43 Me. 197. They are effective, however, as to third persons only so far as they are actually known. Being mere regulations for the management of the internal affairs of the corporation, they are not intended to interfere with the rights of others who do not subject themselves to their operation.

It is, perhaps, more essential that the by-laws of a Maine corporation should be full and explicit than those of any other state, because in many states the powers of the corporation must be set out at length in the charter, whereas under the Maine law it is never necessary to set out any of the

powers; and, as many powers are expressly granted by statute in addition to those implied by the common law, familiarity with the statute is necessary to enable one to readily determine the powers of a Maine corporation. This is especially true of corporations organized under the laws of Maine whose stockholders reside in other states.

In the case of a close corporation, or where the number of stockholders will be small, a brief, simple code of by-laws is desirable, but if the stockholders are scattered, and especially if they are non-residents, it is better to include in the by-laws full and explicit statements of the powers and duties of the corporation and its officers and directors, so that the stockholders may determine from their by-laws what their rights and obligations are without being compelled to seek them in a copy of the Maine statutes, or, as would be more likely, to consult counsel. The statutes are not always conveniently at hand. The by-laws are in the corporation records to prevent mistakes if counsel have been careful in their preparation.

In the chapter on forms, following, will be given a brief form, and also an extended form which the author has adopted in the organization of a great many corporations whose business is to be transacted out of the state, and which has seemed to meet with the general approval of counsel abroad. But it is hardly possible for a "ready-made" set of by-laws to answer the needs of any particular corporation unless especially modified to meet its requirements.

§ 31. Adoption and Contents.

The by-laws are usually adopted by the stockholders, at their first meeting for organization, and must, of course, be adopted by a majority vote of the stock subscribed for; or if the by-laws are adopted, as they frequently are, by the associates at organization before any subscription to the stock has been made, then they should be adopted by a majority vote of the associates. In any event, their adoption is a part of the first meeting.

The statute provides (Ch. 51, § 49), "Corporations may * * * * make by-laws consistent with the laws of the state and their charters." The power to amend has the same limitation. They must not be repugnant to law, either common or statutory, nor must they conflict with the constitution of the state or of the United States. They must not affect vested rights.

The statute also provides as follows: "Corporations may, among other provisions, determine by their by-laws," the following: (Ch. 51, § 50.)

(1) The Manner of Calling and Conducting Meetings.

It is usual in this section to specify by whom regular and special stockholders' meetings shall be called, what officers shall issue notice and to whom, what notice shall be given, etc., and the date and place of the annual meeting. Its provisions should be explicit, so that an inspection of the records will readily show whether or not a meeting has been legally called.

(2) The Number of Members that Constitute a Quorum.

Provision may be made in this section, that holders of certain classes of stock shall not be counted in determining a quorum at any meeting. The number constituting a quorum may be fixed at any amount desired.

(3) The Number of Votes to be Given Shareholders.

Under this, cumulative voting may be provided for, or provision made that holders of any particular class of stock shall have no voting rights, or otherwise.

(4) By Whom any or all Officers, except the President and Directors, shall be Elected.

The directors must be elected by the stockholders. The president must be a director and must be elected by the board. (Ch. 51, § 20.) Provision may be made by the by-laws for the election of the other officers by committees or by any particular class of stock.

(5) The Tenure of the Several Offices.

It is usual to elect the officers for one year. The statute provides that they shall be chosen annually, and shall continue in office until others are chosen and qualified in their

stead. (Ch. 51, § 20.) Under this provision of the statute, by-laws may be adopted providing for the division of the board of directors into classes, and their election for a longer term than one year.

(6) The Mode of Voting by Proxy.

Shareholders may be represented by proxies, granted not more than thirty days before the meeting, which shall be named therein. (Ch. 51, § 18.) Any other provision not inconsistent therewith may be adopted under this section.

(7) And of Selling Shares on Neglect to Pay Assessment.

This applies to cases where stock is sold to be paid for by various assessments at different times and is issued as assessable. The use of assessable stock is now quite uncommon. Such provision is seldom incorporated into the by-laws. The statute expressly provides (Ch. 51, § § 39-40) that if a stockholder neglects to pay his assessment within thirty days, the treasurer may sell at public auction a sufficient number of shares to pay the same, by publishing notice of such sale three weeks successively in a newspaper printed in the town, if any, or, if not, in the county where the office of the clerk is established. In *Kennebec & Portland Railway Company v. Kendall*, 31 Maine 477, it was held that this did not impose upon shareholders any personal obligation to pay, but simply provided that they should forfeit their shares for non-payment. The subscription contract might be, and usually is, so drawn as to impose a personal obligation. Shares are not assessable, however, unless so expressly provided in the by-laws.

(8) Duties of Officers and Their Fees.

Corporations may prescribe the duties and fees or compensation of their officers. This is purely for the by-laws, the duty of each officer being taken up and quite fully described in separate sections.

The statute provides that the corporation may enforce all by-laws by penalties not exceeding \$20.00. (Ch. 51, § 50.) There is no provision for forfeiture of shares upon violation of any by-law except for failure to pay assessments,

and if it is desired to enforce penalties, provision therefor should be made in the by-laws.

In addition to the foregoing subjects, provision may be made, if desired, under the broad powers of section 49, for almost any other subject consistent with the laws of the state and the charter of the company. If the charter provides for preferred stock, it is usual to insert in the by-laws all the provisions relating to the same, and also all other special powers and rights which the corporation may legally have. It will be found convenient to arrange the various provisions in the following order:

- (1) General matter, such as name, corporate seal, location, etc.
- (2) Stockholders and meetings.
- (3) Directors.
- (4) Executive Committees (if any.)
- (5) Officers.
- (6) Stock.
- (7) Dividends and financial provisions.
- (8) Amendments.

§ 32. Amendment.

Since the stockholders may make the by-laws, they may amend them at any time at a meeting called for that purpose. Notice of an intention to change the by-laws must always be given stockholders. It is sometimes claimed by counsel that at the regular annual stockholders' meeting, amendments of the by-laws may be made without previous notice, but, as such changes affect the underlying contract of membership, it seems to be well established that, except in minor details, no amendment to the by-laws can be made, even at the annual meeting, unless notice of an intention to make such amendment is contained in the call for the meeting.

It is frequently the case that the by-laws provide for amendment by the directors. As the Supreme Court has held in *Maine Mutual Marine Insurance Company v. Neal*, 50 Maine, 301, that the corporation can legally vest all its cor-

porate powers in a board of directors, there would seem to be no question of the right of the stockholders to vest in the board the right to amend the by-laws. It has been expressly so held in: *Kent v. Company*, 78 N. Y. 182; *Bergman v. Association*, 29 Minn. 275; *People v. Chicago Board of Trade*, 45 Ill. 108. They could not, however, amend any by-law affecting their own election or qualification. When any amendment is made by the directors, notice thereof should at once be given to all stockholders.

Many corporations keep a record of the certificate of organization and by-laws in a separate book. When this is done all amendments should be recorded in their regular order at the end of the by-laws. Whether so kept or not, it is usual to minute in red ink on the margin of the original record of the by-laws, the fact that such by-law has been amended, giving the date of the meeting, so that from a casual examination of the by-laws themselves, it can be readily determined what amendments have been made and when.

Co-extensive with the right to amend is the right to repeal. Care should be taken, however, in amending or repealing a by-law that no vested rights are interfered with. In that case the action is void. *Kent v. Quicksilver Mining Co.*, 78 N. Y. 159.

CHAPTER V.

FIRST MEETINGS

§ 33. First Meeting of Associates.

As the existence of a corporation commences with the filing of the certificate of organization with the Secretary of State, the persons organizing the corporation are not properly termed stockholders until that time. In practice they do not sign any stock subscriptions until the latter part of the first meeting, so that during the larger part of the first meeting they are strictly speaking associates.

The first step is the execution of a written agreement specifying that it is the intention of the signers to organize a corporation, setting out the name and the object or purposes, and appointing a time and place for a meeting for organization. Nothing further is required. (Ch. 51, § 7.) It is not necessary that this agreement should specify the amount of capital stock, the number or par value of shares, or the names of any of the officers. This agreement is called the articles of agreement. When it appears that the incorporators had held meetings, adopted by-laws, chosen officers, etc., it is sufficient evidence of the existence of the company although there is no legal record of its first meeting and acceptance of its charter. *Trott v. Warren*, 11 Me. 227; *Sampson v. Steam Mill Corporation*, 36 Me. 78.

§ 34. Notice of First Meeting.

The statute next provides that the first meeting of the associates shall be called by one or more of the signers, by giving notice thereof in writing to each signer, or publishing

such notice in a newspaper printed in the county, at least fourteen days prior to the time appointed therefor. (Ch. 51, § 8.)

This section also provides that each of the signers of these articles may in writing waive notice and fix the time and place of such meeting. No notice or publication will then be necessary. By following this provision the fourteen days' notice can be omitted, and the associates can hold their meeting for organization and prepare their certificate on the same day on which they sign the articles. In actual practice, the record of almost every corporation is made to include as part of the articles of agreement such a waiver of notice.

The organization of a corporation is not defective, however, because notice of the first meeting is not served upon each corporator in accordance with the law of the state, when it appears that the powers conferred by the charter have been assumed by the persons by whom it was intended they should be enjoyed. *McClinch v. Sturgis*, 72 Me. 288.

§ 35. Organization Meeting.

At the time and place appointed, the associates meet for organization. A majority of the associates is necessary to constitute a quorum of this meeting, there being no stock then subscribed for. Each associate will have one vote. The absence of some of the associates will not prevent a majority from proceeding with the organization. (Ch. I, § 6, Par. 3 See § 13.) Associates who can not be present at such meeting may be represented by others who may act for them through special powers of attorney for that purpose.

The usual steps after electing a chairman and a secretary, the latter to be sworn and a record made of the oath, are to vote to organize into a corporation, to adopt a corporate name, to define the purposes of the corporation, to fix the amount of capital stock, to divide it into shares by fixing the number and par value, to adopt a code of by-laws and to elect a board of directors, clerk and a treasurer.

The clerk should be sworn and the minutes should contain a statement to that effect. The usual method is to insert the oath in full in the record, and have the officer administering the oath sign the original jurat therein.

A vote is then passed that the capital stock of the company be open for subscription, and the associates each subscribe for the number of shares they intend to take. As a matter of practice only one share is usually subscribed for by each associate. This fully complies with all the statutory requirements. The by-laws adopted are usually prepared previously and are carefully read over and adopted as a whole. Sometimes other business is transacted at this meeting, such as the purchase of property by the corporation, or the giving of authority to the board of directors to issue stock of the company in payment for the property purchased; but as Ch. 51, § 7 of the statute explicitly provides that the associates may do only what has been above stated, and as the corporation is not yet legally organized, it can hardly be said that such a vote is the action of the corporation. Such action would certainly require subsequent ratification. It is much better to take no action except that expressly permitted by statute until after the certificate of organization has been filed with the Secretary of State and the corporation has a legal existence.

§ 36. First Meeting of Specially Chartered Corporations

When a corporation has been chartered by the legislature, the first meeting is called by notice, signed by some person named in the legislative act, delivered to each member or published in the newspaper as in the case of corporations under the general law, except that only seven days' notice is required. (Ch. 51, § 12.) The same provision is also made for holding a meeting under a waiver of notice. After the choice of a chairman and clerk, the first business is to accept the charter which contains the name of the corporation and its objects or purposes. In other respects the procedure follows the steps taken under the general corporation law.

§ 37. First Meeting of Directors.

A meeting of the directors must be held after the stockholders' meeting to complete the work required in the execution of the certificate of organization. After choosing a president and a secretary of the board of directors, a vote should be passed providing that the president, the treasurer and a majority of the directors prepare the certificate of organization and an adjournment is then taken to some date after this certificate shall have been filed and the corporation shall be fully organized for reasons stated in section 21 preceding. For the form and manner of executing this certificate see Chapter III, preceding.

A majority of directors elected will constitute a quorum at this meeting, unless otherwise provided in the by-laws. The minutes are usually prepared beforehand as in the case of the meeting of associates, and a written waiver of notice incorporated in the record.

§ 38. Validity of Meetings.

The meeting of the associates must be held within the state. In *Freeman v. Machias Water Power Co.*, 38 Me. 345, the court said: "It was decided in *Miller v. Ewer*, 27 Me. 509, that all votes and proceedings of persons professing to act in the capacity of corporators, when assembled without the borders of the sovereignty granting the charter, are wholly void." If this meeting is held out of the state, or if the records and certificate of organization of a corporation are all signed and executed out of the state, the organization is void. The organization is not defective because notice of the first meeting was not served on each corporator if the powers conferred by the charter have been assumed by the corporators. The presumption is that all the requirements of law have been complied with when there is no evidence to the contrary. *McClinch v. Sturgis*, 72 Me. 288.

When all the members of a corporation are present in person or by proxy at a meeting, and sign a written consent

on the record thereof, such meeting is legal. (Ch. 51, § 17.) It is the usual practice to have all the members of the corporation sign such a written consent at the end of the record of the organization meeting. Such practice is prudent in all meetings.

If the certificate of organization is not prepared and filed with the Secretary of State within sixty days after the first meeting, the organization of the corporation is void. (Ch. 51, § 9.) As to subsequent stockholders' meetings held out of the state see paragraph 66 hereafter.

§ 39. Adjourned Meetings.

If in the organization there are temporary subscribers for stock and temporary officers elected, adjourned directors' and stockholders' meetings are usually held after the incorporation is complete, at which the resignations of the temporary officers are accepted and permanent officers elected in their places; or, as is sometimes preferred, after receiving the resignations, the meeting of the directors is adjourned to meet at the home of the real owners of the stock in some other state where such vacancies are filled.

If the stock of the corporation is to be issued at the outset for property to be purchased, a vote to this effect is usually adopted at an adjourned stockholders' meeting, or immediately after the corporation is fully organized, and at this meeting additional shares of stock are subscribed for by the stockholders, if the organization was made through a subscription of one share each. The steps taken in transferring corporate control from the temporary stockholders and temporary officers to the real parties in interest vary with the necessities of each case. Properly drawn by-laws furnish safe, simple and expeditious methods for such transfers of control.

CHAPTER VI.

CORPORATE EXISTENCE.

§ 40. From What Date.

The statute provides that "from the time of filing the copy of their certificate in the Secretary of State's office, the signers of said articles and their successors and assigns shall be a corporation." (Ch. 51, § 11.) The same provision appears in Ch. 51, § 3, relating to the organization of corporations chartered by special act of the legislature. The existence of a corporation, therefore, does not date from the time of the passage of the act of the legislature or from the time of meeting of the associates for organization under the general law or from any arbitrary date that they may fix by their articles of association, but from the time of filing the copy of the certificate in the office of the Secretary of State. Until then, there is no corporation. (§ 14, *ante*.)

§ 41. Beginning Business.

In the case of a corporation chartered by special act or of one organized under the general law, the statute provides that a copy of the certificate shall be filed with the Secretary of State "before commencing business." (Ch. 51, §§ 3, 9.) There is no other requirement.

In many states a corporation cannot incur debts until a certain proportion of its capital stock is subscribed or paid in. There is no such provision in Maine. It can begin business and incur debts at once, even though nothing be paid in on the stock subscribed, and but three shares need be subscribed for.

§ 42. Duration.

Unless especially limited by the certificate of organization, the duration of the corporation is perpetual. If, however, the corporation was chartered by special act and has not organized and commenced actual business within two years from the day when such act took effect, the act becomes null and void. (Ch. 1, § 6, Par. 28.) If a corporation is organized under the general law, its organization will become null and void within two years from the day when the certificate of its incorporation was filed in the office of the Secretary of State, unless the corporation has commenced actual business under its organization. (Ch. 1, § 6, Par. 29.)

There seems to be no provision for reporting this state of facts or recording it in any department, but undoubtedly if any officer of the corporation will send to the Secretary of State his affidavit on oath that the corporation "never commenced actual business under its organization," and that its organization is therefore null and void under the provisions of this statute, the Secretary of State will file such certificate in his department and minute the fact on the record of the certificate and thereafter no further franchise tax will be assessed against the corporation.

If a corporation which has commenced business has since ceased to transact business, but desires to retain its corporate existence, it can, upon making application to the Attorney General, obtain from him a certificate to that effect to be filed with the Secretary of State. Such certificate excuses the corporation from making the annual return required by section 28, and from paying all franchise taxes assessed after the date thereof. (Ch. 51, § 33.) Whenever such corporation desires to again engage in business it may do so by filing in the office of the Secretary of State a notification to that effect, whereupon its liability to a franchise tax again begins.

§ 43. Forfeiture.

It is believed that except under the provisions of Ch. 1, § 6 above cited, no corporation becomes dissolved *ipso facto* by its failure to perform any duty devolving upon it or by the happening of any event, but that the action of the courts is always necessary to effect a dissolution. "A corporation is not dissolved by merely ceasing to exercise its powers," "nor because its stockholders and directors consider it defunct." *Rollins v. Clay*, 33 Me. 132; *Proprietors, etc., v. Webb*, 66 Me. 398. Such action may be either by a bill in equity to be discussed in the next section, or by proceedings in the nature of quo warranto.

§ 44. Suspension.

For a number of years the Legislature has been in the habit, at each session, of providing for the suspension of corporations which had failed to pay their annual franchise tax for a term of years. The legislature of 1915 provided (now Ch. 9, § 23) that the Secretary of State shall annually publish a list of all corporations which have failed to pay their franchise tax for the preceding year. Such publication shall be made in August in three newspapers in the state. Corporations which fail to pay all franchise taxes due on or before the first day of December following are suspended and thereupon have no right to use their charters. Such charters may be revived at any time by payment of all franchise taxes and expenses of advertising. In the meantime, while under suspension taxes are assessed as usual although no notice of that fact is sent to the company.

Of course while the charter is suspended the corporation has no right to do any business whatever and anything it might do or any contracts it might make would be void, but undoubtedly if the officers of the corporation, while such charter was suspended, should do any corporate business in good faith and without actual knowledge of the fact that

the charter was suspended, such acts would be validated by the revival of the charter through payment of franchise taxes afterward.

§ 45. Dissolution.

It frequently becomes desirable to legally terminate the franchise to exist as a corporation. In such case a meeting of the stockholders should be held for the purpose. The notice for the meeting should state explicitly the object of the meeting. The stockholders can, by majority vote, resolve to dissolve the corporation. In such case a bill in equity should be brought against the corporation by some officer, stockholder or creditor in the Supreme Judicial Court in the county in which it has an established place of business or in which it held its last stockholders' meeting. *Pride v. Pride Lumber Co.*, 109 Me. 458. The court will order notice in term time or vacation, usually by publication in some newspaper, and upon satisfactory proof the corporation will be dissolved and terminated. (Ch. 51, § 89.)

If it appears at the hearing that there are no existing liabilities and no existing assets requiring distribution among creditors or stockholders, final decree of dissolution is made at once. (Ch. 51, § 89.) If, however, there are liabilities or assets, the court has power to appoint receivers and trustees, issue injunctions, and pass interlocutory decrees and orders according to the usual course of proceedings in equity. (Ch. 51, § 90.) Such dissolution will not relieve any officers, stockholders or other persons from any liability, except as may be stated in said decree. (Ch. 51, § 91.) Unless there are assets requiring the appointment of a receiver or trustee, the statutory proceedings are inexpensive and simple and decree issues as a matter of course.

The provision that such proceedings for dissolution apply whenever the charter of a corporation has expired or been forfeited, applies more properly to paragraphs 28 and 29 of section 6, Chapter 1, of the Revised Statutes. Paragraph 28 provides that all acts of incorporation granted since Janu-

ary 1, 1893, become null and void in two years from the day when the same take effect, unless such corporations shall have organized and commenced actual business under their charters. Paragraph 29 provides that the organization of any corporation under any general law of the state shall become null and void within two years from the day when its certificate of organization has been filed in the office of the Secretary of State, unless such corporation shall have commenced actual business under its organization.

If a company practically abandons the business stated in its purposes and becomes merely a holding company it has "ceased to do business" under this section if its purposes do not authorize it to act as a holding company. *Van Oss v. Petroleum Co.*, 113 Me. 180.

The same provision applies also to sections 21 and 22 of Chapter 9 of the Revised Statutes. All business corporations are required to pay an annual franchise tax by section 18 of Chapter 9 aforesaid. If any such corporation neglects or refuses for one year to pay such tax to the state, its charter shall be liable to forfeiture. (Ch. 9, § 21.) Whenever any such tax shall have remained in arrears for six months after it shall have become payable, it is the duty of the Treasurer of State to report the same to the Attorney General, that he may forthwith apply to the Supreme Judicial Court by bill in equity in the name of the state for the forfeiture of the charter of such delinquent corporation. The proceedings are practically the same as above. The court will order such notice to those interested as it deems proper, appoint receivers and trustees if necessary, and issue such injunctions, and make such decrees and orders as the nature of the case may require. (Ch. 9, § 22.)

The same provision applies also when the duration of the corporation is expressly limited in the charter, but this is a rare occurrence. Such receiver would have the power to appear in and carry on all suits at law or in equity which had been begun against such corporation prior to the bringing of such bill in equity, until the termination of such suits, and if suits are brought in this state against a foreign corporation, and jurisdiction is properly obtained, a judgment of

the state creating the corporation decreeing its dissolution and appointing receivers to wind up its concerns will not prevent such action in Maine from proceeding to judgment unless it is shown that the corporation is entirely extinct. *Hunt v. Columbian Insurance Co.*, 55 Me. 290. The reason for this is that in order to obtain jurisdiction of the action by the courts of Maine, the plaintiff must have obtained, by attachment or trustee process, a lien upon the property or assets of the defendant corporation, and the appointment of receivers in the foreign state would not transfer to them the right to control such assets in Maine in such a manner as to defeat the plaintiff's previously acquired lien. Comity between the states would not require the courts of Maine to permit foreign receivers to exercise privileges detrimental to citizens of Maine pursuing remedies in our courts. "Our courts will not subject our citizens to the inconvenience of seeking their dividends abroad when they have the amounts to satisfy them in their own control." (Kent's Commentaries, 4th Ed., Vol. II, Page 406.)

When the charter of a corporation expires or is otherwise terminated, it has a corporate existence for three years thereafter, to prosecute and defend suits, settle and close its concerns and dispose of its property. (Ch. 51, § 81.) *Shore Line R. R. v. M. C. R. R.*, 92 Me. 476.

§ 46. Receivers.

By Ch. 51, § 81 provision is made for the appointment of receivers and for the dissolution of corporations in the following cases: "Whenever any corporation shall become insolvent or be in imminent danger of insolvency, or whenever through fraud, neglect or gross mismanagement of its affairs, or through attachment, litigation or otherwise its estate and effects are in danger of being wasted or lost, or whenever it has ceased to do business or its charter has expired or been forfeited." The proceedings are much the same as under the previous method. Application is made to the court by any creditor or stockholder by a bill in equity. The bill

is filed and notice ordered the same as under the proceedings mentioned above and the court may issue injunctions or restraining orders, appoint receivers, which appointment shall have the effect of dissolving all attachments made within thirty days before the filing of the bill, and decree dissolution of the corporation, or it may order the receiver to sell the property and franchises of the corporation, in which case the purchaser succeeds to all the rights and privileges of the corporation, and may reorganize the same under the direction of the court. An attested copy of the final decree for dissolution should be filed at once by the clerk of courts in the office of the Secretary of State. The ordinary fees payable to the clerk of courts and the Secretary of State together with the expense of publishing notice in the newspaper will amount to from fifteen to twenty dollars.

When a receiver is thus appointed, he must be duly sworn and give bond in such sum as the court may determine.

He has power to institute and defend suits at law or in equity, to collect and receive the property and assets of the corporation and sell or convert the same into cash, and conduct and carry on the business of the corporation as ordered by the court, if it appears for the best interests of all concerned.

The decree of appointment vests title to the real estate in the receiver and he has his title and possession as against those having merely liens, but who are not in possession even though a technical "seizure" on execution has been made. *Cobb v. Camden Savings Bank*, 106 Me. 183.

In such proceedings the title of the receiver relates back either to the filing of the bill or the issuing of process by the court or to the service of process according to the nature of the case. *Bisbee v. Manufacturing Co.*, 107 Me. 185. He must report to the court as often as every six months and from time to time distribute the assets of the corporation. (Ch. 51, § 84.) The debts of the corporation are paid in full by the receiver or trustee when the funds are sufficient, and when not, ratably to those

creditors who prove their debts. Any balance is distributed among the stockholders in proportion to their interests. (Ch. 51, §§ 84, 104.)

§ 47. Sale of Property and Franchises.

No corporation can sell, lease, consolidate or part with its franchises or its entire property or any of its property rights or privileges essential to the conduct of its corporate business and purposes, otherwise than in the ordinary and usual course of its business, except with the consent of its stockholders at a meeting called for that purpose. (Ch. 51, § 60.)

Previous to 1915, this was limited to a parting with "its franchises" and many questions arose as to the meaning of this term, it being contended by some that its franchises included "entire property" or "property essential to the conduct of its corporate business." To settle this question the act of 1915, Ch. 315 was passed providing as above stated. It is not believed that the action of directors in creating a bond issue in the ordinary course of business and authorizing a mortgage or deed of trust of the companies property to secure same is included under this, so-called, "minority stockholders act."

§ 48. Rights of Minority Stockholders.

Any stockholder who, at a meeting called to consider the sale or lease of such property or franchises of a corporation, voted in the negative and filed his written dissent therefrom with the president, clerk or treasurer of the corporation within one month thereafter, may preserve his rights in the following manner: The corporation, if it desires, may, within one month after such dissent is filed, enter a petition in the Supreme Judicial Court in equity in the county where the corporation held its last annual meeting, setting out the facts of the case and praying that the value of the shares of such dissenting stockholder may be determined. (Ch. 51, § 61.)

If the corporation fails to enter petition as aforesaid such stockholder may, within one month thereafter, himself enter and prosecute a similar petition. (Ch. 51, § 62.) Any justice of the court, in term time or vacation, may hear the facts and determine the value of the stock of such stockholder and make and enforce such decrees and orders as may be necessary to secure all his rights. (Ch. 51, § 63.) There is provision for appeal by the corporation upon depositing, in some bank or trust company designated by the court, the amount awarded, to be held until final judgment, and also a provision for a jury trial on appeal if desired. During the pendency of any such appeal the stockholders have a lien on all the property of the corporation, which shall have precedence over any mortgage or lease made by the corporation. (Ch. 51, § 64.) If any stockholder fails, after voting in the negative, to file his dissent, he is considered to have assented to the vote. (Ch. 51, § 65.) The transfer to the purchaser or lessee is not affected by the pendency of proceedings for the valuation of shares of dissenting stockholders. The property is delivered subject to the lien above stated. The transfer moves on, unimpeded by injunction, subject to the right of the dissenting stockholder to ultimately receive in cash the value of his stock as determined by the court.

CHAPTER VII.

CORPORATE POWERS.

§ 49. Statement in Certificate.

As previously stated § 18, it is not necessary to state in the certificate of organization any of the powers of the corporation. In many states corporations have only such powers as are specifically claimed in the charter. In Maine, by statute, from the time of filing the copy of their certificate in the Secretary of State's office, the signers of the articles of association become a corporation with all the rights and powers and subject to all the duties, obligations and liabilities provided by law as fully as if specially chartered, and consequently such corporation has a common law power to do any act which an individual could, and a plain grant of the right to use all the means suitable and proper to accomplish the corporate purposes. The charter of a corporation so organized consists not only of the certificate of organization, but also of all the general laws under which it is incorporated, and so much of the common law as is reasonably applicable. The certificate should be scrupulously restricted to a statement of the corporate purposes. All extra-statutory allegations are valueless.

§ 50. Statutory Powers.

By statute all the necessary powers of a corporation are expressly granted to it without any mention thereof being made in the certificate of organization. Such powers are:

- (1) May Sue and be Sued.

Corporations may sue and be sued, plead and be impleaded in their corporate name the same as individuals. (Ch.

51, § 49.) A corporation may sue and be sued in the county in which it has an established place of business, or in which the plaintiff or defendant, if a natural person, lives. (Ch. 86, § 13.)

Trustee process shall be returnable in the county where the trustee, if a corporation, has its established place of business, held its last annual meeting, or usually holds its meetings. (Ch. 91, § 5.)

Service of action may be made on a corporation by leaving an attested copy thereof with its president, clerk, cashier, treasurer, general agent, or director; if there is no such officer within the county where the corporation is established, with any member thereof. (Ch. 86, § 19.) In all proceedings against a foreign corporation licensed to do business in this state service shall be made by leaving a copy of the process in the hands or in the office of the lawfully appointed attorney of the corporation. (Ch. 51, § 107.)

Services of all processes at law upon a corporation must be thirty days before return day thereof. (Ch. 86, § 19.) In proceedings in equity the court has power to make such order of notice as justice may require.

(2) Have a Common Seal.

Corporations may adopt a corporate seal alterable at pleasure. (Ch. 51, § 49.) It is usual to provide either at the first meeting of the associates for organization or in the by-laws for the form of this seal. It usually contains the name of the corporation, the date or year of organization and the name of the state. The statute prescribes no form.

The statute provides that whenever a corporation seal is required on an instrument an impression made on the paper by the seal without any adhesive substance shall be deemed a valid seal. (Ch. 1, § 6, Par. 17.)

The seal of the corporation must be affixed to all certificates of shares of stock. (Ch. 51, § 36.) It is usual to affix the corporate seal to all documents of importance, but it is not necessary, except to deeds of real estate and bonds. Its use is governed by the rules of law affecting similar acts by individuals. (See § 104.)

(3) Election Officers.

Corporations may elect all necessary officers, prescribe their duties and fix their compensation. (Ch. 51, § 49.)

Under this heading is included the power to elect or appoint agents. The statutes provide that corporations shall be bound by parol contracts made by an agent authorized by vote or by their by-laws and that contracts may be implied from the acts of a general agent. (Ch. 51, § 72.)

(4) Make By-Laws.

This has been discussed under Chapter IV.

(5) Hold and Convey Land and Property Anywhere.

Corporations, whether domestic or foreign, may hold, purchase, mortgage and convey real estate and personal property generally in the state. (Ch. 51, § 49.) This power is very broad and contains no limitations as to the amount of property so to be held.

Corporations organized under the laws of this state have the same powers in other states. (Ch. 51, § 51.) Directors may hold meetings out of the state and there transact business and perform all corporate acts not expressly required by statute to be performed within the state. (Ch. 51, § 20.) Comity between the states will generally permit a Maine corporation to exercise this broad power anywhere, but strictly speaking the state of Maine has no inherent power to authorize its corporations to hold property in other states unless permitted by the laws thereof. Statutes stop at the boundary line.

The general power to convey lands and other property and to mortgage and convey real estate and personal property gives the corporation the power to mortgage its property to secure bonds, and these may be issued for any amount. This power is sustained by the court in *Fitch v. Lewiston Steam Mill Company*, 80 Maine 34, holding it to be a well settled principle that corporations have power to mortgage their property for the security of their debts as incident to the power of acquiring and holding it. Stockholders are expressly exempt from personal liability upon mortgage debts. Such bonds and mortgages may be authorized by a majority

vote at any legal meeting called for the purpose. A majority of a quorum is sufficient. But see § 43 following as to public service corporations.

If a mortgage includes real estate it should be recorded in the registry of deeds in the county where any such real estate is located. If the mortgage conveys personal property, or personal property is included therein, it should be recorded in the city or town where the corporation has its established place of business. (Ch. 96, § 1.)

All mortgages of real estate must be acknowledged by the officers signing the same before a justice of the peace, notary public or other officer authorized by statute to take acknowledgments. (Ch. 78, § 23.) They should bear the seal of the corporation.

The provisions of Sections 36 to 48 inclusive of Chapter 57 of the Revised Statutes apply to all mortgages of franchises, lands or other hereditaments given by any corporation to trustees to secure the bonds of said corporation. (Ch. 51, § 73.) The sections last referred to relate to the foreclosure and redemption of railroad mortgages and provide in what manner and upon what conditions the trustees may foreclose a mortgage given to secure bonds; how the holders of such bonds, coupons, etc., may reorganize the corporation and take title to its property; for the levying of assessments to redeem prior mortgages if necessary; for the sale of the franchises and property of the corporation if desired, and how the purchaser may reorganize the corporation and succeed to its rights; and for the jurisdiction of the Supreme Judicial Court in equity to hear and determine all controversies arising in such proceedings. These provisions are so long and complicated that no further mention is made of them here. The interested reader is referred to the statutes. In the issue of negotiable bonds, corporations organized under Chapter 51 may covenant in the mortgage or deed of trust for such methods of foreclosure and other powers of the trustee, as may be deemed expedient. Industrial corporations can issue, as security for their bonds, the most approved forms of trust deeds. The statutes furnish an additional, but not exclusive remedy.

(6) Committees.

Directors may act through committees whose powers shall be defined in the by-laws. (Ch. 51, § 20.) When the board contains a large number, or the directors are widely scattered, this is a convenient provision and one frequently employed.

(7) Stock and Bonds of Other Corporations.

"Corporations may purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock of or any bonds, securities or evidences of indebtedness created by any other corporation or corporations of this or any other state, territory or country, and while owner of such stock may exercise all the rights, powers and privileges of ownership, including the right to vote thereon." (Ch. 51, § 55.) Prior to the enactment of this section the court had doubted whether one corporation could hold stock in another. *Franklin Co. v. Lewiston Institution for Savings*, 68 Maine 43. This express provision was enacted to remove any doubt that may have been created by that decision and by the common law doctrine prevailing in many states that such power does not exist unless expressly conferred or necessarily implied by the charter. As will be noticed, the section refers expressly to stock of other corporations. This has been construed by the Attorney General as impliedly prohibitive of the purchase and resale by a corporation of its own stock, and for this reason he refuses to approve any unqualified provision in the statement of purposes of a Maine corporation authorizing it to purchase, hold and sell shares of its own capital stock. The provision is an improper one in the certificate, because a statement of corporate powers in a document confined by statute to a statement of corporate purposes. If such corporations have the power to purchase their own stock, the statement in the certificate adds nothing to its powers. If the power does not otherwise exist it can not be obtained by claiming it in the certificate. The existence of the power is a question of law. The author does not believe that Chapter 51, section 55 necessarily excludes the power. While no corporation can, without special legislative authority, deal

in its own stock generally, it has a common law right to purchase and reissue its own stock when it can be done without prejudice to the rights of creditors. It is held in Massachusetts that a corporation, unless prohibited, may purchase its own stock. *New England Trust Co., v. Abbott*, 162 Mass. 152.

It is undoubtedly true, however, that a Maine corporation may receive shares of its stock as a gift or may take them in payment of a debt, and in such cases it can again sell or dispose of such shares, since otherwise its capital stock would be proportionately reduced. (Clark and Marshall on Private Corporations, § 202.) While any such stock is held by the corporation, no one has the right to vote on it, nor is it entitled to dividends, but it is not thereby extinguished.

When one corporation holds the stock of another, its directors are eligible as directors of the latter corporation, although they do not personally own any of the stock. (Ch. 51, § 20.)

(8) Issue of Stock for Property or Services.

Except as qualified by the statutes regulating payment for stock in property or services, nothing is to be deemed a payment for stock unless bona fide made in cash or some other matter or thing at a bona fide and fair valuation thereof. (Ch. 51, § 96.) This the court has repeatedly construed as applying only to those taking stock directly from the corporation itself, and not as making the purchaser from an existing stockholder liable, although such purchaser has notice that the stock has never been fully paid for to the corporation. For a full discussion of this question with special reference to "full paid stock," see § 64 "Consideration for Issue" following, also § 56 "Treasury Stock" following.

(9) Different Classes of Stock.

Corporations may create two or more kinds of stock with such classes, designations, preferences, voting powers, restrictions or qualifications as shall be fixed and determined in the by-laws, or by vote of the stockholders. (Ch. 51, § 53.) If different kinds are thus created at the organization the

fact should appear in the certificate of organization, since that must show the amount of capital stock. (See § 18.)

(10) Changes.

In addition to the special powers above enumerated stockholders have the right to make changes in their charter as follows:

(1) Increase of Capital.

The stockholders may, at any regular or special meeting called for the purpose, vote to increase the capital stock to any amount. When this is done a certificate of such action should be filed with the Secretary of State within ten days. His fee therefor is five dollars. A fee is also payable to the State Treasurer, as organization tax for the additional amount, unless the tax already paid covers the amount of the increase. (Ch. 51, § 41.)

(2) Change of Par Value.

The stockholders may in like manner change the par value of the shares to any amount. (Ch. 51, § 38.)

(3) Decrease of Stock.

The stockholders may similarly vote to decrease the amount of capital stock. (Ch. 51, §§ 41-47.) This has already been discussed in § 21 preceding.

(4) Number of Directors.

If the number of directors is inconvenient for the transaction of business, the stockholders may similarly change the number to any number desired, whether odd or even. (Ch. 51, § 41.)

(5) Change of Location.

The corporation may change its location from one county to another in a similar manner. In such case the corporation must file a certificate of the change in the registry of deeds in each of said counties. (Ch. 51, § 56.)

(6) Change of Name.

A corporation may vote to change its name and adopt a new one in a similar manner, and under its new name it shall have the same rights and powers as under the old. (Ch. 51, § 50.)

(7) Other Changes.

There is a general provision that when a corporation shall make a change in its charter or certificate of organization in any manner, for the more convenient transaction of its business, it shall forward a notice of such change to the Secretary of State, who shall record the same in a book kept for that purpose. (Ch. 51, § 48.) As previously stated, it is believed that a corporation cannot change its statement of purposes, and as almost every other statement in the certificate can be changed under the special sections of the statute above cited, the foregoing general section would seem to have but little application. It lacks apt expressions to warrant the inference that the legislature intended to grant unlimited authority to change the certificate. There have been instances in the past where the Attorney General has approved and the Secretary of State has recorded certificates purporting to show a change of corporate purposes. Such approval and record were both void. As stated elsewhere, the legislature is always willing to authorize changes in corporate purposes whenever it can be done properly and fairly.

§ 51. Incidental Powers.

A corporation may enter into contracts and engage in transactions which are incidental or auxiliary to its main business, or which may become necessary, expedient or profitable in the care and management of the property which it is authorized to hold under the act by which it is created *Brown v. Winnisimmet Co.*, 11 Allen 326. It may do practically anything which is necessary, ancillary or incidental to the proper carrying out of any of the purposes for which it was organized. Implied powers cannot enlarge these purposes; they simply enable the corporation to carry them into effect in the fullest possible manner.

"The society cannot override and abrogate a by-law by a simple resolution in favor of some object which is forbidden by the by-law." The by-law would thus become of no effect. It would cease to be a protection to the members

which it was intended to be. *Flaherty v. Benevolent Society*, 99 Me. 253.

The implied powers of a corporation are not limited to such as are indispensably necessary to carry into effect those which are expressly granted, but comprise all that are necessary in the sense of being appropriate, convenient and suitable for such purposes, including the right of a reasonable choice of means to be employed. *Flaherty v. Benevolent Society*, 99 Me. 253.

It is a general principle of law that every corporation has by necessary implication the power to do whatever is necessary to carry into effect the purposes of its creation unless the doing of the particular thing is prohibited by law or its charter. *Electric Co. v. Electric Co.*, 107 Me. 279.

It has authority to make and execute any contracts not in themselves illegal that would be adapted to the furtherance of those purposes. *Electric Co. v. Electric Co.*, 107 Me. 279.

A contract beyond the scope of its powers, express or implied, cannot be enforced, but distinction is made and is apparent between contracts foreign in nature to those contemplated in its charter and contracts merely in extension of some corporate power. *Johnson v. Johnson Bros.*, 108 Me. 288.

Among such implied powers are, as incidental to the right given by the statute to hold and convey property, the right to borrow money and give the corporation's note or other obligation for the same, and to mortgage its property to secure its obligations. (See § 49, (5) preceding.)

Corporations organized under Chapter 51 do not, however, have the right to loan money for profit. This is hardly necessary to the conduct of the business of the ordinary business corporation, and corporations cannot be organized under Chapter 51 to engage in the business of acquiring profit from the loan or use of money. (Ch. 51, § 7.)

It is, however, *ultra vires* of a corporation to execute accommodation paper or enter into contracts of guaranty or suretyship not in furtherance of its business unless given

express authority to do so, but as a corporation has the right to borrow money and give its note therefor it follows that the title of the holder of accommodation paper before maturity can only be defeated by proof that it took it with knowledge that it was accommodation paper, or under such facts and circumstances that he is chargeable with notice. *Johnson v. Johnson Bros.*, 108 Me. 287.

Since a corporation organized under Chapter 51 can purchase and hold the stocks, bonds and other evidences of indebtedness of other corporations, firms or individuals, it can aid such other concerns by securing or guaranteeing all obligations in which it is pecuniarily interested, or if necessary to procure the payment of a debt due from them, although it is beyond the ordinary power of a corporation to act as surety or generally to guarantee the contracts or obligations of others. *Davis v. Old Colony R. Co.*, 131 Mass. 258.

A corporation can act as agent within the scope of its charter powers, but not as trustee or surety without special authority from the legislature, nor can it ordinarily become a party to a partnership agreement.

The right to buy and sell includes the power to lease and sublease, while the general power to make contracts confers the power to compromise or submit to arbitration, and to appoint and act through agents.

The fact that any particular act or contract would increase the business, and hence the profits of a corporation, although entitled to consideration, is not the only criterion by which to determine whether or not such act is within the scope of its powers. As above stated it must be within the general objects and purposes for which the corporation was created, and if it has not that tendency it is *ultra vires*.

CHAPTER VIII.

CAPITAL STOCK.

§ 52. Definition. Capital Stock and Capital are Distinguishable.

"Stock, in corporation law, instead of being the evidence of indebtedness, is a right to partake according to the party's ownership of the surplus profits obtained from the use and disposal of the property of the corporation, and a share of stock is the interest which the stockholder has in the corporation, which is the right to participate in the profits, and upon its dissolution, in the division of its assets. The stockholders do not own the corporate property. The corporation owns the property. In a broad sense the stockholders own the corporation." *Sweetsir v. Chandler*, 98 Me. 145.

There is no identity between the individual owning stock in a corporation and the corporation itself. A corporation is an entity and the fact that one person owns all the stock does not make him and the corporation one and the same person. *Ulmer v. Railroad Co.*, 98 Me. 594.

It is well settled that the stockholders of a corporation have no rights until all other creditors are satisfied. They have the full benefit of the profits made, but cannot take any portion of the funds until all other claims are extinguished. *In re Brockway Manufacturing Co.*, 89 Me. 126.

The corporation therefore owns the capital, the money and property with which it does business. The stockholders merely own shares of stock showing the interest which they have in the corporation.

§ 53. Amount.

The only limitation upon the amount of capital stock is section 8 of Chapter 51, which provides that the amount of capital stock shall not be less than One Thousand Dollars (\$1,000.) Above that amount the stockholders may fix upon any amount of capital stock they see fit. (See § 21 preceding.) The amount of capital stock is determined in the first instance by the associates at their meeting for organization, and must be stated in the certificate of organization.

Public service corporations, however, can issue stock only when authorized by the Public Utilities Commission of Maine and such stock must be issued at par.

§ 54. Classes of Stock.

Corporations may create as many different kinds of stock with such designations, preferences, and voting powers, or restrictions and qualifications thereof, as they may determine upon at their meeting for organization or at any subsequent stockholders' meeting, duly called for that purpose. (Ch. 51, § 53.) The provision covers all kinds of preferred stock, founders' shares and guaranteed or other special stocks. When different classes of stock are created at the meeting for organization, the amount of each class and its designation should be stated in the certificate of organization.

It is not necessary, however, that the certificate should contain any further reference thereto, although sometimes when it is desired that certain classes of stock shall always retain certain characteristics, and that these shall not be changed by the stockholders, the various restrictions and qualifications pertaining to such classes of stock are fully set out in the certificate of organization. This is entirely unnecessary. The certificate should be confined to corporate purposes. Any by-law or vote fixing the characteristics of a given class of stock is irrevocable and unalterable without the consent of every stockholder affected. Such provisions

are contractual. Unnecessarily placing them in the certificate of organization adds nothing to their inviolability.

In any event the by-laws should contain a full and complete statement of all the characteristics of these stocks, and the stock certificates issued for each class should always contain a similar statement. That the stockholders may have full knowledge of their rights and privileges, it is usual to print on the back of such certificates a copy of the by-laws or votes of the company relating thereto. It is not usual for companies in Maine to issue more than two kinds of stock, common and preferred, although occasionally companies will issue four or five different kinds, designating them as common, preferred class A, preferred class B, guaranteed stock, convertible stock, etc., or otherwise.

The question frequently arises whether, if at organization but one kind of stock is provided for and that has been issued, other kinds of stock creating preferences can afterward be issued by the corporation. The statute is not very explicit on this point and the question has never been passed on by our court.

Many text-book writers hold that such other classes of stock can be issued only by consent of all the stockholders. The only cases cited as authority for these statements are a few very old cases in states where there was no general statute as there is in Maine. The reason usually given for this principle is that when no other stock has been created the common stockholders are entitled to all the earnings of the corporation; that this is in the nature of a contract between the stockholders and the company itself and after this right has become fixed by issuing common stock the creation of other classes of stock, with special rights, would take from the common stockholders their inviolable rights, and in order that their rights may be protected there must be consent of all the stockholders to such a change.

This principle is entirely correct as far as it goes, but it should be remembered that by becoming a stockholder in a corporation a person impliedly assents to any subsequent amendment of the articles of incorporation not fundamental,

authorized by the legislature, and designed to enable the corporation to conduct its business more beneficially. Such amendments are auxiliary to the original object "and by becoming a stockholder he impliedly assents that they may be made." In re Sharood Shoe Corp., 192 Fed. 945; Moore v. Staples, 32 Minn. 284.

Thompson on Corporations, § 2244, says "they can only be created when the authority to create them is given *by statute* or charter or by agreement between all parties interested."

Clark and Marshall on Private Corporations, § 415, says "if the charter of a corporation or *the general law* in force at the time of its creation expressly authorizes it to issue preferred stock there can be no question as to its power in this respect so long as it keeps within the power so conferred, and the power may be exercised by the vote of a majority of the stockholders against the dissent of the minority." Later in the same paragraph, after stating that the contract with the corporation cannot be impaired, the author says, "therefore, if a corporation when it issues common stock is not expressly authorized to issue preferred stock either by its charter or by *the general law*, it cannot afterward issue the same without unanimous consent." The author also maintains that an amendment of the charter of a corporation authorizing preferred stock may be accepted by a majority of the stockholders as it does not change the character of the object of the corporation, and that the corporation may by by-law provide for the issue of preferred stock by a majority vote if provision for such an issue is made in the "general law in force at the time of its creation." In Sec. 417 he says "the terms of the contract must be made in connection with the provisions of the charter, *the general law*, the by-laws in force at the time the stock was issued, and the proceedings under which the stock was issued. All these enter into and form a part of the contract."

Cook on Corporations, 4th Ed., § 268, after stating the "contract theory," says "if, however, the statutes of the state authorize the issue, or if the by-laws contemplate

the future issue of preferred stock, its issue will be legal even though some of the stockholders object."

Cases so holding are, however, very few in number.

In *Campbell v. American Zylonite Co.*, 122 N. Y. 455, the court held that the rights of the common stockholders are vested, and in the absence of some power to change the relative value of the shares conferred *by statute* or by the articles of association, no change can be made without consent of all stockholders.

See also to the same effect *Ernst v. Elmira Improvement Co.*, 24 N. Y. Misc. 583; *Pollitz v. Wabash R. R. Co.*, 135 N. Y. S. 785, and 10 Cyc. 369.

In *Hinckley v. Schwarzschild etc. Co.*, 45 N. Y. Misc. 176, a corporation was organized in 1893 when the general statute authorized preferred stock by unanimous consent only. In 1901 the Legislature passed a general law authorizing its adoption by a two-thirds vote. Thereafter the company by a two-thirds vote created preferred stock and the court held that the plaintiff became a stockholder subject to the reserved power of the Legislature to alter or amend the scope and provisions of the original articles of incorporation; that although the plaintiff had vested rights they were subject to the will of the majority by statute,—in this case majority of two-thirds,—provided that will is expressed in the manner prescribed by law and for the general welfare of the corporation.

In *Page v. Whittenton Mfg. Co.*, 211 Mass. 424, the court confirms a recent statute providing that corporations may create two or more classes of stock, etc., by the articles of association, "or in an amendment to said agreement or articles which may be adopted as hereafter provided."

In view of the fact therefore, first, that the act is general providing for several kinds of stock with all kinds of preferences and qualifications; second, that it uses the words "every corporation" and so must apply to corporations then existing as well as those afterward created; third, that every person taking stock is supposed to know the general law of the state, and fourth, that the act provides that this is

to be done "by vote of the stockholders at a meeting duly called for the purpose," it is believed that should the question arise in our courts it would be held that this means by a majority vote of the stockholders in the same manner in which other questions are determined; otherwise the Legislature would have provided either for vote of all the stockholders, or as many of the states have recently provided, for a vote of two-thirds or three-fourths of all the stockholders.

§ 55. Preferred Stock.

Preferred stock is stock commanding a given dividend which must be paid, or provided to be paid, before any dividend can be paid on the common stock. Usually, also, on dissolution it is paid in full from the assets before any distribution is made to the holders of the common stock. Preferred stockholders are not creditors of the corporation. They share in the profits or in the assets on dissolution like other stockholders, subject only to the provisions of the preferred stock. *Railroad Co. v. Belfast*, 77 Me. 452. *Spear v. Lime Co.*, 113 Me. 285.

Whenever preferred stock is issued it is usually for the purpose of raising money with which to purchase the plant or other necessary property for the corporation and to avoid the issuing of bonds or mortgaging the company's property. The usual difference between common and preferred stock is in the amount and character of dividend paid. Preferred stock may be cumulative or non-cumulative. Its rate of dividend is usually fixed by the by-laws. If the stock is cumulative, provision is made whereby, if the profits of the corporation for the fiscal year will not permit the payment of the dividend at the rate specified, no dividend whatever is paid to the common stockholders, but the preferred stockholders continue to receive such dividends as are declared until the full amount of dividend at the specified rate has been paid with all arrears. If the preferred stock is non-cumulative, then in case there is a deficiency at the end of any fiscal year, this

deficiency is not thereafter made up to the preferred stockholders, but they receive for that year such dividends as the company can properly pay and no more. For a discussion of what are net earnings of a corporation, and what indebtedness, etc., should be paid before dividends can be paid on preferred stock, see *Railroad Co. v. Belfast*, 77 Me. 445. Also § 61.

When two or more classes are issued by a corporation, the by-laws usually provide that the common stockholders shall be entitled to all the dividends after dividends have been paid on the preferred stock, unless provision is made, as it usually is, for setting aside a certain amount each year for improvements or a sinking fund or for the equalization of dividends in the future. If, therefore, the company is making but a small profit, the preferred stockholders may receive dividends in full while the common stockholders receive nothing. Should the company, however, make large profits the dividend on the common stock may be much larger than that on the preferred. Thus the market value of the preferred stock is usually stable while the market value of common stock may fluctuate largely, since it is dependent entirely upon the amount of dividends the company may earn each year. Dividends on preferred stock usually vary from five to eight per cent., depending upon the nature of the business.

Unless provision is made in the by-laws to the contrary, preferred stock has the same voting rights as common. It is a frequent practice, however, where preferred stock is issued for the purpose of raising money for the purchase of property, and is therefore looked upon as a substitute for bonds, for the promoters of the enterprise to take the common stock and to sell the preferred stock to outsiders, with the expectation that the profits will be sufficiently large to make the dividends on the common stock greater than those on the preferred, and in such cases it is usual to deny to preferred stockholders any voting rights, thus keeping the entire management of the corporation in the hands of the common stockholders.

It is also sometimes provided that holders of preferred

stock shall have the right to vote as long as dividends on preferred stock are paid regularly, but if not paid for two or three successive years their right to vote shall cease. It is usual also to provide in the by-laws that the holders of preferred stock shall be entitled to greater privileges than the holders of common in the event of dissolution. This provision should also be printed on the certificates when issued. Preferred stockholders usually receive the par value of their stock, and if it is cumulative stock, all dividends in arrears also, before the common stockholders are entitled to participate in a division of the assets of the company. In Maine all such provisions are fixed by the stockholders and not by statute. The statute confers the general power to issue preference stocks and leaves all details to the stockholders.

The preferential rights of preferred stockholders are enforceable in equity against the corporation and other stockholders. *Spear v. Lime Co.*, 113 Me. 285.

§ 56. Treasury Stock.

Treasury stock is stock which has been issued and has come into possession of the corporation which issued it, or of some person as trustee for such corporation, usually as a gift or in liquidation of some indebtedness. Such stock has usually been issued for a valuable consideration and so has become full paid stock and is an asset of the corporation, but so long as it is held by the corporation, or some person in trust for it, it has no voting power and does not participate in dividends.

The issuing of stock at par for property or services rendered to the corporation at a fixed valuation with the understanding that a portion of it is to be donated back to the treasury of the corporation, or to some trustee for the benefit of the corporation, as treasury stock to be thereafter sold by the corporation at less than par though still full paid stock is upheld by practically all the text book writers in the absence of any statute expressly forbidding it. In

such cases it is usual for some individual or some other corporation owning property to make a proposition to the corporation to transfer to it such property or to perform services for it, in return for which the corporation is to issue its capital stock full paid. The property so conveyed or the services so rendered are then appraised at a valuation which will stand the test of the statute regulating the purchase of property, etc., by the directors. The party to whom the stock was so issued then transfers a portion of same usually to some trustee for the benefit of the corporation under an agreement providing it shall be sold under the direction of the board of directors of the corporation for the purpose of procuring working capital. Having been issued at par as full paid stock, the purchaser of such stock directly from the corporation, or the trustee, at less than par does not incur the statutory liability for its debts.

Great care should be taken, however, that the primary issue to the owner of the property be under such a state of facts as to make the stock in his hands legally full paid, otherwise such proceedings might be held to be a device to evade the law, and therefore illegal. The fact that the person to whom the stock is issued returns a part of it as a gift to the corporation does not necessarily prove that the property was over valued. It may well be that he may have been willing to sacrifice a part of his property in order to make the rest more valuable. (Cook on Corporations § 46.) Whether the stock is legally issued seems to be a question of fact determinable by the circumstances of each case. In the absence of fraud the transaction is valid, but if tainted with fraud the statutory protection is removed and the stock does not become full paid stock. For further discussion of this question of full paid stock see § 64.

§ 57. Payment at Organization.

It is not necessary that at the time of organization anything should be paid in upon any of the capital stock subscribed for. The certificate of organization must state the

amount of capital stock and the amount already paid in, if any. (Ch. 51, § 9.)

§ 58. Number of Shares at Organization.

It is not necessary to issue the full amount of the authorized capital stock at organization or at any definite time thereafter. At least three shares must be subscribed for at organization. This number is not expressly mentioned in the statute, but arises from the fact that at least three persons are necessary at organization and that each of these persons must be a subscriber for stock. (Ch. 51, § 7.)

A corporation, therefore, may provide for a capitalization much larger than it needs at the outset. Only a small amount of this authorized stock need be issued in the beginning, but, as the business grows, the expansion may be taken care of by the sale of additional stock whenever desired. The only disadvantage in so doing is the fact that the fee to the State Treasurer at organization is based upon the whole amount of the authorized stock, and that the annual franchise tax is assessed upon the amount of authorized stock, regardless of the amount actually issued. For this reason unless there is a fair prospect that the authorized stock will all be issued within a reasonable time, it is advantageous to organize with a small capital stock, and thereafter provide for expansion of the business by amending the certificate of organization, increasing the capital to the amount reasonably desired. Conservative capitalization is an element of strength.

§ 59. Par Value of Shares.

The par value of the shares may be fixed at any amount desired. The only provision of the statute is that the certificate shall state therein "the par value of the shares." (Ch. 51, § 9.)

§ 60. Increase or Decrease of Capital Stock.

At any time after organization the amount of capital stock may be increased (Ch. 51, § 41) or decreased (Ch. 51, §§ 41 to 47, inclusive), and the par value of the shares may be changed. (Ch. 51, § 38.) If it is desired to increase the stock or change the par value of the shares, a meeting of the stockholders must be called for that purpose. A majority vote of the stock issued is necessary. A certificate signed by the president or clerk, stating the action of the meeting, should be filed with the Secretary of State within ten days after such action is taken. (Ch. 51, § 38.) The Secretary of State is entitled to a fee of five dollars for filing such certificate. (Ch. 118, § 13.)

When the capital stock is increased from ten thousand dollars or less to not exceeding five hundred thousand dollars, the fee to the Treasurer of State, for use of the state, is forty dollars. If it is increased to an amount exceeding five hundred thousand dollars such fee is ten dollars for each one hundred thousand dollars of such increase. These fees are to be paid in advance. (Ch. 51, § 41.)

There are two methods of reducing the capital stock. Whenever the assets of the corporation have been so diminished by losses or by depreciation that its capital is impaired, such corporation, at any meeting called for the purpose, may, by two-thirds vote of all the outstanding stock, reduce the capital stock as may be desired, and thereupon the par value of all shares shall be reduced proportionally. (Ch. 51, § 44.) Provision is made for the rights of dissenting stockholders under Ch. 51, § 45. (See § 18 preceding.) After such reduction new shares may from time to time be issued of the new par value. (Ch. 51, § 47.)

If the assets have not been thus diminished, but the stockholders still desire to reduce the authorized stock, for instance, for the purpose of reducing the amount of annual franchise tax, and the authorized stock has not been fully issued, the stockholders may effect such reduction by majority vote of all the stock issued.

The act of 1911, incorporated in the statute as the last part of Ch. 51, § 43, now provides especially that where there remains in the treasury any unissued capital stock the decrease may be effected by first retiring such unissued capital stock not exceeding the amount of the decrease; otherwise, the first part of the same section provides that each stockholder must "surrender such proportion of his stock as the amount of decrease shall bear to the capital stock before the decrease, so that each stockholder shall have the same proportion of the whole capital stock of the company as before the decrease." The rights of creditors, however, cannot be affected by any reduction of capital stock. In any case certificate of the action of the stockholders must be filed with the Secretary of State and a fee of \$5 paid.

§ 61. Redemption of Preferred Stock.

There is no statutory provision relating to the redemption of preferred stock or to the exchange of such stock for common stock, but any provision relating thereto that may seem desirable to the associates at organization may be incorporated in the by-laws or votes creating the stock (Ch. 51, § 53) and should be printed upon the stock certificates issued.

Corporations often desire to retire the preferred stock at some subsequent date in much the same manner as they would take up and retire a bond issue, and therefore provide in their by-laws or votes that such preferred stock shall be redeemed at some fixed time. Provision is often made that a certain number of shares shall be redeemed each year, the number of shares so redeemed to be determined by lot. As all these provisions are fixed and determined by the by-laws or votes creating the stock, which all stockholders are presumed to know, every purchaser of preferred stock takes it with a full understanding of the rights of the company in this respect and the by-laws or votes are considered to be in the nature of a contract between such stockholder and the company, unalterable except by unanimous consent.

§ 62. Subscriptions.

There is no statutory requirement as to subscriptions to the capital stock, except such as may be inferred from Chapter 51, sections 7, 8 and 9, providing that at least three persons are necessary to organize the corporation, and the further provision that the certificate of organization shall set out the names and residences of the owners of the stock. The company is fully organized when this certificate of organization has been approved, recorded and the certified copy thereof filed, and the fees paid. (Ch. 51, § 11.)

The statute contemplates different forms of subscriptions to the capital stock of the corporation. There may be a simple agreement, indicating an intention to take stock in a corporation when formed, or an express promise to take and pay for a certain number of shares in any manner agreed upon. It may be the intention of the subscribers that the stock will be issued to them to be paid for by assessments made at various times as needed or it may be the intention to pay for the shares in full when issued.

In the former case, by Ch. 51, sec. 39, if the stockholder neglects to pay such assessment on his shares for thirty days after the call therefor, the treasurer of the company may advertise and sell at public auction a sufficient number of such shares to pay the assessment on the amount owned, and the treasurer's certificate of the sale of such shares, recorded as other transfers are, will pass a good title to the purchaser. (Ch. 51, § 40.)

When stock is thus to be paid for by assessment, it has been held that the statute does not authorize any action in behalf of the company against the stockholder personally, but that the statutory remedy by sale is exclusive. *Kennebec & Portland Railroad Company v. Kendall*, 31 Me. 470. This decision is based upon the fact that there is no express contract between the company and the stockholder promising to pay the company the full price of the stock, and that therefore the statutory remedy is exclusive. "The general act respecting corporations, authorizes them to determine by their

by-laws the mode of selling shares for non-payment of assessment, but it imposes upon the shareholder no personal obligation to pay." *K. & P. R. R. v. Kendall*, *supra*. Formerly this mode of subscription and payment for shares prevailed quite generally, but at present almost the only form of subscription used is an express promise to take and pay for a certain number of shares of the corporation.

If this subscription is made before the organization of the company, it is an agreement from which a subscriber has a legal right to withdraw at any time before the completion of the organization. *Starrett v. Rockland*, 65 Me. 374. "The right rests upon the impregnable ground of the legal impossibility of completing a contract between two parties, only one of which is in existence. There can be no meeting of the minds of the parties. There can be no acceptance of the subscriber's proposition to become a stockholder. If, however, the subscriber's promise to take and pay for shares remains unrevoked until the organization of the corporation is effected, and his promise has been accepted, then we have all the elements of a valid contract, and the subscription has become binding upon both of the parties, but until a corporation has come into existence a subscriber's promise amounts to no more than an offer, which, like all mere offers, may be withdrawn at any time before acceptance." *Bryant's Pond Steam Mill Co. v. Felt*, 87 Maine 234.

Of course subscription papers may be so worded as to create binding contracts between the subscribers themselves, in which case there might be a right of action on the part of other subscribers in case one of the parties failed to pay for his shares, but the ordinary subscription paper is not so worded. The modern contract of subscription is a direct promise to the corporation with a clear right of action against the signer in the name of the corporation.

If the whole capital stock is not subscribed for at organization, it is usual for the stockholders at their first meeting to provide by resolution when the subscription books shall be open, and it is generally made the duty of the board of directors, or of the treasurer, to receive subscriptions, either

for the full amount of stock or for such portion thereof as may be designated. There is no statutory provision in relation to this, and, as previously stated, a corporation may proceed to do business, if it desires, with but three preliminary shares subscribed.

There is no statutory provision relating to the amount to be paid for shares subscribed, and the subscriber of stock, whose subscription is accepted by the company, becomes in law a stockholder, although he may have paid nothing and his stock certificate may not be issued to him for some time.

The stockholders may authorize the sale of the shares at such prices as they deem advisable, and if the stock is sold as full paid and non-assessable, though for less than par value, the company itself cannot enforce payment for any balance. (See next section.) By issuing stock as full paid the corporation is estopped from denying that it has received the par value therefor, although, as will be seen hereafter, this will not prevent creditors of the corporation from recovering the difference between the amount paid and the par value of the stock in appropriate cases. "In the case at bar, the stock was issued by the corporation itself as fully paid stock, and the corporation had no right of assessment or future calls upon the stockholders, and no right of action existed in favor of the corporation against any stockholder for assessments or calls." *Libby v. Tobey*, 82 Me. 397.

§ 63. Stock Certificates.

Shares of stock are represented by certificates, usually printed or lithographed, with the seal of the corporation affixed, signed by the president or vice-president and by the cashier, clerk or treasurer, or assistant treasurer. (Ch. 51, § 36.) The statute does not authorize the delegation of the duty.

As stated in the preceding section, the fact that a certificate of stock has not been issued does not deprive the purchaser of his rights as a stockholder in the company. If he has subscribed for his share, his rights are as complete

as though the certificate had been issued to him. In *Barron v. Burrill*, 86 Me. 66, the first payment on the stock was made on June 8th, and the right to receive the stock was transferred to an assignee of the subscriber on the 10th of the following November. No certificate was ever issued to the original subscriber. The court held, "Ownership of stock is none the less real because the usual evidence of ownership—certificates of shares—have not been issued." The certificate is, in legal effect, a statement on behalf of the company that the person whose name appears therein is the owner of the number of shares mentioned. It contains no promise of any kind.

Certificates for preferred stock should contain, either on their face or plainly printed on the back thereof, the particular provisions of the by-laws or of the votes of the stockholders, referring to preferred stock. If printed on the back, mention thereof should be made upon its face. Such holder of preferred stock should have ample notice of his rights and liabilities, and no opportunity to claim want of knowledge.

The corporation seal is usually affixed by means of stamping or impressing the seal upon the paper itself, but it may be simply a wafer attached to or pasted upon the certificate, with the inscription of the seal written or printed thereon, or the impression of the seal may be made upon wax attached to the face of the certificate. (Ch. 1, § 6, Par. 17.)

Stock certificates, as usually printed in the general market, provide for the signature of the secretary of the company. The statutory term applied to the recording officer of the stockholders of a Maine corporation is "Clerk." "Secretary" of a Maine corporation is the term properly applied to the recording officer of the board of directors only. The statute recognizes no such officer as "Secretary." The directors may create such an officer to keep their records, but the records of the stockholders must be kept by the "Clerk." The statute does not require or authorize certificates of shares to be signed by the secretary, and in practice they are usually signed by the president or vice-president and by the treasurer. In case either of said officers is absent or is unable to sign, the

signature of a majority of the directors in his stead is sufficient. (Ch. 51, § 36.) It is competent to provide in the by-laws that the certificates shall be signed or countersigned in any manner desired in addition to the particular signatures required by the statute.

It is not permissible for one of these officers to sign blank certificates and leave them for another officer to fill out when the certificates are sold, nor should any officer sign a certificate without knowledge of the apparent title of the person to whom it is issued. (Ch. 51, § 36.)

Certificates are usually bound in books similar to check books, with stubs showing the number of the certificate, person to whom issued, date of issue, date of cancellation, and number and name of person to whom new certificate or certificates were issued therefor. When the certificate is returned for cancellation, caution on the part of the officers of the corporation will require its being plainly stamped or marked "Cancelled," or some similar term. It is frequently the custom to paste the cancelled certificate upon the stub from which it was originally taken.

If a certificate is lost or stolen, the company will usually replace it on due proof being furnished of such loss or destruction. The company may, however, and usually will, require a bond of indemnity before it will replace the instrument. Provision is usually made in the by-laws for such cases.

If the certificate has been lost or stolen the finder or the thief of course acquires no title thereto, but if the proper officers of the corporation have had no notice of the loss or theft and the certificate is presented to them with the request that a new certificate be issued in place thereof, the company in the absence of proof of negligence could hardly be made liable for the issue of such new certificate. Should the officer issuing such certificate have had knowledge of facts which ought to have put him upon inquiry, he would doubtless be personally liable to the corporation for any damages caused by his negligence.

§ 64. Consideration for Issue.

The statute contains the following general rule for issue of stock, so far as the rights of creditors are concerned: "The capital stock subscribed for any corporation is declared to be and stands for the security of all creditors thereof; and no payment upon any subscription to or agreement for the capital stock of any corporation, shall be deemed a payment within the purview of this chapter, unless bona fide made in cash, or in some other matter or thing at a bona fide and fair valuation thereof." (Ch. 51, § 96.)

This section has been qualified somewhat by section 54, adopted in 1901, providing that, "Any corporation may purchase mines, manufactories and other property necessary for its business, and the stock of any company or companies owning, mining, manufacturing or producing materials or other property necessary for its business, and issue stock to the amount of the value thereof in payment therefor, and may likewise issue stock for services rendered to such corporation and the stock so issued shall be full paid stock and not liable to any further call or payment thereon; and in the absence of actual fraud in the transaction, the judgment of the directors as to the value of the property purchased, or services rendered, shall be conclusive."

In 1890 the Supreme Court decided, in *Libby v. Tobey*, 82 Me. 397, that under this statute property received for stock would not be regarded as payment except to the extent of its true value. This left the question of the true value open to judicial review, and Maine was much criticised in the corporation literature issued by other states, as an unsafe home for corporations. It was urged that no person would dare to purchase stock of a corporation and pay for it in property or services as the value of such property or services might be called in question by creditors, and such stockholder be compelled to make good any deficiency in actual value as found by the court. To set this question at rest the legislature in 1901 provided (Public Laws of 1901, Ch. 229, § 13, now Ch. 51, § 54) that any corporation might

purchase mines, manufactories and other property necessary for its business and the stock of any company owning similar property, and issue stock to the amount of the value thereof, in payment therefor, and likewise issue stock for services rendered to the corporation, and that in such case stock so issued should be full paid stock, and also that "in the absence of actual fraud in the transaction, the judgment of the directors as to the value of the property purchased or services rendered shall be conclusive." (Ch. 51, § 54.) The act follows the language of the New York, New Jersey and Delaware acts. The statute is a comparatively recent one in each of these states and has hardly been fully construed by the courts.

In New York it has been held that a mere mistake or error in judgment by directors, if made in good faith, will not subject the holder of stock to the liability of the statute, good faith and honest judgment being all that is required. *Lake Superior Iron Co. v. Drexel*, 90 N. Y. 87.

In New Jersey, the court held in *Donald v. American Smelting & Refining Co.* 62 N. J. Eq. 729, that the judgment of the directors is not conclusive as to the value of the property where the purchase is contemplated but not consummated; that it is not necessary that conscious overvaluation or fraudulent conduct should be shown to justify judicial interposition. This, however, was an action on the part of the stockholders and not of directors.

In *Holcombe v. Trenton White City Company*, 80 N. J. Eq. 122, the New Jersey court discussed the question very fully, and held that the doctrine that corporate stock is a trust fund for the benefit of creditors is now a statutory doctrine; that the language of the statute is simply declaratory of the common law, and that there must be actual fraud in the transaction to enable creditors to call the stockholders to account. In this case the court held that, while the directors acted with perfect honesty, yet in their zeal and enthusiasm they mistakenly believed that what they assumed to take over had a value which they could capitalize; that "other conduct beside that of deliberate fraud on the part of directors will render stockholders liable for unpaid stock."

"Their honest judgment if reached without due examination into elements of value, or if based in part upon an estimate of matters which really are not property, may lead to a violation of this statutory rule as surely as would corrupt motive." The case is an interesting one, not only for its full discussion of this point, but also for its discussion of the question of rights of promoters, of bonus stock and of rights of transferees.

Later in *Review v. Groff Drill Co.*, 84 N. J. Eq. 321, the court of that state considered another phase of the case. Here the directors took over a manufacturing plant. The actual plant itself was appraised at \$45,000. The directors adopted a resolution setting out that the concern, including plant machinery, patents, etc., produced an income of \$12,000 annually, and they therefore valued the entire property at \$200,000. The court held that this value was not excessive; that the directors had a perfect right to take into consideration all future prospects of the company, and while they might not perhaps capitalize good will on any such basis, their honest judgment as to capitalization of patents, etc., would not be overturned.

The act of 1901 in Maine has not yet perhaps been fully construed.

In *Mason v. Carrothers*, 105 Me. 392, the act is discussed somewhat, although the case turned upon the rights and liabilities of promoters of the corporation. Mr. Justice Cornish in a very able opinion says of the act,—“This contemplates two independent contracting parties, the one buying and the other selling, each looking out for his own interests. It does not contemplate one party dealing with himself and acting in two capacities. It means also the honest and bona fide judgment of the directors and the facts here negative the idea that even these dummy directors were of the honest and bona fide opinion that the patent rights were worth the price paid, when there was in existence a contract to convey the same property to them for \$50,000 instead of \$799,400 of common stock.”

This case was of course too plain to need any discussion. There is a line of cases of which *Blum v. Whitney*, 185

N. Y. 232 and *Old Dominion Copper Mining Company v. Lewishon*, 210 U. S. 206, are familiar examples holding that if such transactions are agreed to by all the stockholders existing at the time, even though they be dummy stockholders no fraud is committed upon the corporation and the corporation itself cannot rescind, though this rule will not always hold as to transfers of such stock without notice.

As previously stated § 55, the fact that a portion of the stock so issued for property or services is donated to the company as treasury stock, does not necessarily make the transaction fraudulent.

It is believed that the harsh trust fund theory followed in some states is being recognized throughout the country as inequitable and that, while courts will endeavor to protect creditors, yet they will make a distinction between such non-speculative properties as real estate, stock in trade, etc., and speculative properties such as patent rights, mining rights, etc., and following the case of *Review v. Groff Drill Company*, just cited, will hold the rule to be "what, under all the circumstances, considering the proposed use to which the property is to be put, and the general purpose for which the corporation is created, is the fair value of the property against which its capital stock is to be issued."

For a consideration of such speculative property as the basis of full paid stock, see case of *South Mountain Consolidated Mining Co.*, 8 Sawyer, U. S. 366. *Iron Co. v. Hays*, 165 Pa. State, 489. *Gamble v. Company*, 123 N. Y. 91.

Of course where the overvaluation is so great that the fraud appears on its face, the court will hold the transaction fraudulent as a matter of law, but where the overvaluation is not so apparent, the facts may not be construed to constitute fraud within the meaning of the statute, though they may be held sufficient to warrant judicial interposition to prevent the issue of the stock.

Since the Maine act of 1901, which now becomes section 54 of the statute, is almost exactly similar to the acts of New York, New Jersey and Delaware, the interpretation of those courts will probably be followed in Maine.

Since the passage of this act of 1901, however, a stockholder, whose stock was issued in payment for property or services, has unusual protection in Maine, because in addition to the requirement that actual fraud in the transaction must be found before the value of the property can be inquired into, he has the additional safeguards thrown around him that he is not liable for debts not contracted during his ownership of the stock, nor can judgment be obtained against him unless the action therefor is commenced during his ownership or within one year after the transfer by him is recorded on the corporation books. (Ch. 51, § 98.) In order, therefore, to collect of a stockholder, whose stock was issued for property or services, any deficiency in the payment thereof, it must be shown first, that there was actual fraud in the transaction; second, that the property was not of the fair value of the stock issued therefor at par; third, that such stockholder was the owner of such stock when the action was commenced against him, or that he had not disposed of it more than a year previously; and fourth, that he owned such stock when the debt sued for was contracted. It must also appear that he received his stock from the corporation, for a purchaser of stock from another is never liable, although he may have purchased with full notice that the stock first issued was legally unpaid in full. If the debt was a mortgage debt, no personal liability follows any taker or holder of unpaid stock. The creditor must look wholly to his mortgage. It is never necessary that the stock certificate should show whether it was issued for cash or for property or services.

§ 65. Changes in the Amount or Par Value.

This has been already discussed in sections 21 and 50, preceding. Any such change is an amendment to the certificate of organization, and a certificate thereof must be filed with the Secretary of State and the statutory fees paid.

§ 66. Transfer of Stock.

When certificates of stock have been issued they may be

transferred by endorsement and delivery. The delivery of a certificate of stock to a bona fide purchaser or pledgee for value, together with a written transfer of the same or a written power of attorney to sell, assign and transfer the same, signed by the owner of the certificate, will be a sufficient delivery to transfer the title against all parties except the corporation itself. (Ch. 51, § 36.)

Formerly in this state no transfer of a stock certificate would secure it from attachment until the transfer was entered on the books of the corporation. "A transfer of bank stock is not thus valid until recorded. Until that is done a creditor may attach it without alleging or proving fraud." *Skowhegan Bank v. Cutler*, 49 Me. 318.

The present statute was enacted in 1897 and changed the old law completely so that now as between the parties to the transfer, or any other parties except the corporation itself, the record of the assignment is not essential, but actual transfer and delivery is sufficient.

Subject to this section, provision is usually made in the by-laws for the manner of transfer of certificates.

When there are a large number of stockholders it frequently becomes a matter of several days or even weeks to prepare and send out notices of stockholders' meetings. These notices are also sent out some time in advance of the meeting called. It is usual, therefore, to provide in the by-laws that the transfer books of the corporation shall be closed for a sufficient number of days before any stockholders' meeting to enable the officer of the company, whose duty it is to send out such notices, to make a suitable list of the stockholders, with their addresses, and then mail the notices in accordance with the provisions of the by-laws. Such a by-law would not prevent the transfer of stock during this interval, but the corporation would not record the transfer and would regard the holder of record as the owner thereof until after the date of the meeting.

As between the corporation, however, and the holder, no transfer affects the right of the corporation to pay dividends due on the stock, or to treat the record holder as the

holder in fact, until the transfer is recorded on the corporation books or a new certificate is issued to the transferee. (Ch. 51, § 37.)

A pledgee for value holding a certificate of stock for security merely will not, while he so holds the stock, be subject to any of the liabilities of a stockholder, unless he appears on the books of the corporation as the absolute owner of such stock. (Ch. 51, § 94.) If the title to the stock is vested in two or more persons, they must all unite in the assignment, except in the case of joint executors or administrators. In case of such representative parties, the signature of one is sufficient.

There is nothing in the statute prohibiting the transfer of stock which has not been paid for or upon which previous calls have not been fully paid. In such case, unless there is something in the terms of the sale to the contrary, the transferee would be liable for all subsequent calls if the stock is issued as assessable, and the original subscriber would remain liable to the company for previous calls which he had promised, but had failed to pay; the stock would be subject to sale for non-payment of unpaid assessments, although in the hands of a purchaser. These suggestions are not pertinent if the certificate as issued purports to be full paid and non-assessable.

It is a frequent practice to execute an assignment in blank upon the back of a certificate of stock, and in such case it may pass from hand to hand much as a negotiable instrument would. Any purchaser may fill in his name as the transferee thereof and have a new certificate issued to himself regardless of the number of holders between himself and the original transferrer.

Care should be taken, however, that the assignment is properly made and executed by the owner of the certificate. The officers of the corporation are supposed to know the signature of a stockholder and might be liable in case of forgery. They should also satisfy themselves of the legal right of any person claiming to be an executor, administrator or trustee to transfer the stock and may properly refuse to

make the transfer until the right of such party has been proven. Certificates of stock are not negotiable and the right of the owner is superior to that of any one who may purchase the certificate from any holder although if the owner has negligently assigned the certificate in blank, and it has come into the hands of a bona fide holder for value without notice of the loss or theft, it is frequently held that the original owner is estopped from asserting his rights. 2 Cook on Corporations, § 472.

A number of works on Corporations, as for instance Clephane on Public Corporations, § 35 (b), states that "in Maine a collateral inheritance tax is imposed upon stock whether owned by residents or non-residents, a burden which it is well to avoid if possible." These statements are very misleading.

If a corporation is doing business out of the state and has little or no tangible property in the state, an inheritance tax will not be assessed on its stock. (See Chapter XVIII Inheritance Tax.) There is no state tax or fee of any kind on transfers of stock certificates.

If the officers of a corporation refuse to issue a new certificate to a person entitled thereto by assignment he can recover the value of his stock or compel specific performance by proceedings in equity or he may compel performance of that duty by mandamus proceedings. *Dennett v. Manufacturing Co.*, 106 Me. 476.

§ 67. Registrar.

When corporations have a large capital stock which is widely scattered, it has become a frequent practice to employ a registrar, usually some bank or trust company, to take into its hands the entire matter of the issue and transfer of stock certificates. When stock is thus registered the public usually has more confidence in the company, since there is little danger of an overissue. When stock is to be thus authenticated, the by-laws should contain full provision for the same, and the registrar should be elected or appointed the same as other

officers. Certificates would then be issued, authenticated by the signature of the registrar. This signature guarantees that the stock has been properly issued and recorded, but contains no guarantee whatever in regard to the legality of the organization of the company or the primary proceedings relative to the issue of the stock or to the manner of payment for the same.

§ 68. Dividends.

Section 34 of Chapter 51 of the statutes provides that dividends of profit may be made by the directors, but the capital or the debts due shall not thereby be reduced until all debts due from the corporation are paid. This provision, as originally enacted, contained the words, "to the same," after the words "debts due," in the second line. It should be construed in connection with section 97 of the same chapter, which provides that dividends declared in violation of law will not be valid as against judgment creditors or against receivers or persons appointed to close up the affairs of the corporation.

One of the first questions that always arises is when dividends may properly be declared. The court in Maine has construed this statute in several cases. It will be noticed that the language of the statute is very simple. It provides simply that "dividends of profit" may be made.

In *Belfast and Moosehead Lake Railroad Co. v. City of Belfast*, 77 Me. 445, profit is defined as net earnings, that is, the gross receipts less the expenses required to earn the receipts, "but several kinds of charges must first come out of net earnings before dividends are declared. The creditor comes in for consideration before the stockholder. The property of the corporation is a trust fund pledged for the payment of its debts, therefore if there is bonded, funded, permanent or standing debt, the interest on it must be reckoned out of net earnings. If there is a floating debt which it is not wise nor prudent to place in the form of a funded debt, or to postpone for later payment, that should also be paid. If the

financial situation of the company is such as to render it expedient to commence or continue the scheme of a sinking fund for the extinguishment of the company's indebtedness some day or other, an annual contribution out of the net earnings for that purpose would be reasonable. These deductions made from the net earnings, the balance will be profits of the company distributable among the stockholders."

It is not, of course, necessary that all the floating debts should be paid before a dividend is declared. It may be proper to convert them into bonds. All expenses incurred in the original or permanent construction of the company's plant are properly chargeable to capital, and not to profit and loss, and the distinction between expenses of construction and the ordinary expenses of operation should be carefully drawn.

The above quoted section of the statute provides that dividends may be made by the directors under their power to make by-laws consistent with the laws of the states and their charters. (Ch. 51, § 49.) It is competent for the stockholders to regulate this power on the part of the directors, but unless so regulated the stockholders cannot review the honest judgment of the board in their declaration of a dividend.

Of course in the case of preferred or other special stock the directors have no discretion to exercise. If a dividend is earned it must be paid in accordance with the provisions regulating such stock, but "when the right to a dividend is clear, and there are funds from which it can properly be made, a court of equity will interfere to compel the company to declare it. Directors are not allowed to use their power illegally, wantonly or oppressively." *Belfast and Moosehead Lake Railroad Co. v. Belfast, supra.*

Should the directors illegally declare a dividend, section 34 provides that any officer or member who votes or aids in making it shall be fined not exceeding two thousand dollars and imprisoned less than one year, and that all sums received for such dividends may be recovered by any creditor of the corporation in an action on the case. Provision is also made in section 88 that any judgment creditor of the corporation

may follow up such illegal dividend and recover it from the person receiving it, as may also any receiver or person appointed to close up the affairs of an insolvent corporation.

In the case of large corporations it is frequently customary to turn the funds for dividends over to some trust company for payment, in which case notice should be given to all stockholders entitled to participate. Whenever a dividend is declared notice should be given to all stockholders of record.

Section 26 of the statute provides that clerks and treasurers of corporations shall ascertain the residences of all stockholders, and no dividend shall be paid to any stockholder whose residence for the time being is not entered on the books thereof. Section 37 also provides that no transfer of a stock certificate shall affect the right of a corporation to pay any dividend due upon the stock, until such transfer is recorded upon the books of the corporation. "Stockholders have no claim to any dividend until it is declared. Until that time it belongs to the corporation precisely as any other property it may own. When the distribution of the funds of a corporation, whether of the whole or a part, is ordered, it is to be made between those who, at that time, are the owners of its stock." *Goodwin v. Hardy*, 57 Me .143. "The purchaser of a share of stock of a corporation takes the share with all its incidents, and among these is the right to receive all future dividends; that is, its proportional share of all profits not then divided; and it is wholly immaterial at what time and from what sources these profits have been earned." *Murch v. Railroad*, 43 N. H. 520. When once declared, the dividends become the property of the individual stockholders and no longer the property of the corporation.

A corporation has a lien upon dividends declared by it, and a right to hold such as are pledged towards the payment of any legal indebtedness of a stockholder to the company. In case of such indebtedness, therefore, a transfer of the shares would not pass title to the dividends already declared. *Hagar v. National Bank*, 63 Me. 512.

It will be noticed that the statutes, as construed by the court, are no more than an affirmation of the rule generally prevailing throughout the country that dividends are payable only from net profits and are never to be declared to the prejudice of unsecured creditors, nor of secured creditors holding interest obligations overdue. The statutory expression "debts due" does not include bonds not then matured. Stock dividends are permissible when warranted by the surplus profits.

CHAPTER IX.

BONDS

§ 69. In General.

Under present business methods much corporate capital is obtained by the use of bonds which are obligations of the corporation under seal, usually secured in some way by a mortgage or trust deed of property belonging to the corporation. The advantages of issuing bonds are: first, freedom from personal liability on the part of the stockholders; second, the fact that they may be issued for a long term of years and so long as the interest is paid payment of the face of the bond cannot be compelled until they are due. The statute does not expressly provide that corporations may issue bonds, but as a corporation may borrow money and give its note for the same and mortgage its property to secure its obligation therefor, the right to issue bonds secured by a mortgage or trust deed is impliedly, at least, authorized. (See § 50 (5).)

§ 70. Kinds of Bonds.

There are various kinds of bonds. Coupon bonds, the most common kind, and so called because they have attached to them a series of coupons representing the installments of interest due at respective interest periods. Coupon bonds and the coupons attached usually are payable to bearer though sometimes they are registered. Registered bonds are transferable only by assignment duly recorded on the books of the company or its registrar. Guaranteed bonds are those which are endorsed or guaranteed by some other corporation with the same effect as the endorsement or guar-

antee of a note. Collateral trust bonds are secured on personal property, such as stocks, bonds or mortgages, deposited with the trustee instead of real estate. Such bonds are similar to collateral notes. Refunding bonds are created to pay and cancel a maturing issue of bonds. Prior lien bonds are usually junior issues merely prior to some other issue. Convertible bonds are convertible at the option of either party, under certain conditions, into some other form of liability. Redeemable bonds are those payable at the option of the company at a certain time. The value of a bond depends largely upon the value of the property by which it is secured and the character of the corporation issuing it. The careful investor will always study the contract contained in the bond and mortgage securing it.

§ 71. Manner of Issuing.

Bond issues may be created by the board of directors, but it is always advisable, especially if the issue is of any considerable amount, that their action be first authorized by the stockholders although a subsequent ratification may be sufficient. They are usually signed by the president and treasurer, though sometimes by the president and attested by the treasurer. The authority for their execution and issue, and specific authority for the form of contract contained therein, should be definitely fixed by proper resolution therefor.

Public service corporations can issue bonds only when authorized by the Public Utilities Commission of Maine. Application must be made to the Commission, who will order a hearing thereon and in their decree prescribe the terms upon which the bonds may be issued.

They are almost always secured by a mortgage or trust deed issued to some person or corporation as trustee. A reliable trust company is the safest and best. The trustee holds the legal title to the property as security for the bond purchasers and in case of necessity administers the property.

CHAPTER X.

STOCKHOLDERS' LIABILITY

§ 72. To Creditors.

The capital stock subscribed for any corporation is declared to be and stands for the security of all creditors thereof; and no payment upon any subscription to or agreement for the capital stock of any corporation, shall be deemed a payment within the purview of this chapter, unless bona fide made in cash, or in some other matter or thing at a bona fide and fair valuation thereof. (Ch. 51, § 96.)

No dividend declared by any corporation from its capital stock or in violation of law, no withdrawal of any portion of such stock, directly or indirectly, no cancellation or surrender of any stock, and no transfer thereof in any form to the corporation which issued it, is valid as against any person who has a lawful and bona fide judgment against said corporation, based upon any claim in tort or contract or for any penalty, or as against any receivers, trustees or other persons appointed to close up the affairs of an insolvent corporation. (Ch. 51, § 97.)

Provision is also made in Ch. 51, § 98, whereby any person having a judgment against the corporation, or any trustees or receivers appointed to close up the affairs of the company, may within two years commence an action at law or in equity against stockholders and obtain judgment against them personally for any amount for which they may be liable.

In *Grindle v. Stone*, 78 Me. 176, the court held that the plaintiff in order to recover of a stockholder must by evidence bring his case within the provisions of the statute by showing—

(1) That he has a lawful and bona fide judgment against the corporation based upon a claim in tort or contract or for any penalty recovered within two years next prior to the commencement of such action.

(2) That the defendant subscribed for or took stock in the corporation and has not paid for the same as payment is defined in the statute.

(3) That the cause of action upon which his judgment against the corporation was founded was contracted during the ownership of such unpaid stock.

(4) That his proceedings to obtain his judgment against the corporation were commenced during the defendant's ownership of such unpaid stock, or within one year after its transfer was recorded on the corporation books.

In *Hight v. Quinn*, 86 Maine 491, it was held that not only must these facts be alleged in the declaration, but that it must also be alleged that the plaintiff's debt was not secured by mortgage, otherwise the declaration would be demurrable.

The liability of stockholders can be enforced by but two classes of persons:

First: One who has recovered a lawful and bona fide judgment against the corporation, based upon any claim in tort or contract, not secured by mortgage, or for any penalty.

Second: A trustee or other person appointed to close up the affairs of an insolvent corporation. In both cases only after the amount of the deficiency of its assets has been judicially ascertained. (Ch. 51, § 98.)

A determination of deficiency of the assets of the corporation must first be made, which can only be after the settlement and approval of account of an assignee or receiver. The question of deficiency of assets cannot be litigated perhaps with a different result in the case of each stockholder. *Gillin v. Sawyer*, 93 Me. 151.

The recovery of the judgment against the corporation establishes conclusively plaintiff's right to satisfy his judgment out of any assets belonging to the corporation. The stockholder cannot be considered in default until such judgment is recovered. *Damon v. Webber*, 111 Me. 473.)

Such person can recover of

(1) Persons who have subscribed for, or agreed to take, or have taken stock directly from the corporation, and not by purchase from an existing stockholder, and have not paid its par value either in cash or some other thing, at a bona fide and fair valuation thereof (Ch. 51, § 98); or in mining, manufacturing and other property necessary for the business of the corporation, or in the stock of any other company owning, mining, manufacturing or purchasing materials or other property necessary for its business, or any services rendered to the corporation, the directors having without actual fraud determined that the property or services had a value equal to the par value of the stock issued therefor. (Ch. 51, § 54.)

(2) Persons who have purchased or taken, either from the corporation or any stockholder, stock which is assessable by the charter or by-laws of the corporation upon which the assessments are unpaid (Ch. 51, § 98), and issued as so assessable.

(3) Persons who have received a dividend by way of withdrawal from the capital stock, or in violation of law. (Ch. 51, § 98.)

(4) Persons who have withdrawn any portion of their capital stock or cancelled or surrendered any of their stock and received valuable consideration therefor from the corporation, except its own stock or obligation. (Ch. 51, § 98.)

(5) Persons who have transferred any of their stock to the corporation as collateral security or otherwise, and received any valuable consideration therefor. (Ch. 51, § 98.)

In the above cases the extent of liability will be the amount of capital stock so remaining unpaid or withdrawn, not exceeding, of course, the amount of the judgment or the deficiency of the assets of the corporation. (Ch. 51, § 98.)

No stockholder will be liable if he has paid for his stock as above stated, or if any other previous holder has so paid for it, or if the debt is a mortgage debt or was not contracted during his ownership of the stock, or if he holds it in a representative capacity or as security merely; or if he has already in good faith paid the amount for which he is liable to some

person holding a bona fide judgment against the company, or to some trustee or receiver of the company; or if he has a good claim in set off against the company; or if he has in good faith and without collusion been sued by someone and is in peril of being compelled to pay his liability to such person. (Ch. 51, § 99.)

To recover of a stockholder, even under the above circumstances, a preliminary action against the corporation must be commenced during his ownership of such stock, or within one year after its transfer by such stockholder is recorded on the corporation books. (Ch. 51, § 98.) Or if such recovery is attempted on the ground that he has illegally received dividends or has withdrawn any portion of his stock as above stated, a preliminary action against the company must be brought within two years after such amounts were received by him from the corporation. If the action is brought by receivers, trustees or other persons appointed to close up the affairs of the insolvent corporation, the proceeding, by virtue of which such corporation passed into the hands of trustees or receivers must be commenced within two years after such amounts were so received. (Ch. 51, § 99.)

The stockholder may set off against his statutory liability any debt which the corporation owes him, whether the suit is brought by a judgment creditor or by a receiver or trustee of the corporation in the event of its insolvency, or a winding up of its affairs in court. *Appleton v. Turnbull*, 84 Me. 72. *Morgan v. Howland* 89 Me. 488. (Ch. 51, § 98.)

In perhaps a majority of states this right of set off is denied while in many states, like Massachusetts and New York, a distinction is made between suits brought by creditors and those by receivers, etc., set off being allowed in the former cases only.

These distinctions are based on the old "trust fund" theory following *Wood v. Dummer*, 3 Mason (U.S.) 308, but this seems to impart to the debt of a stockholder a quality different from any other debt he may owe. His obligation to pay for his stock is no more sacred than any

other he may incur and he should have the same right of set off. In this respect Maine seems in advance of most of the states.

If any such stock was paid for in property, services, or the stock of another company at the valuation thereof fixed by the directors of the corporation, such valuation is conclusive in the absence of actual fraud, and will render the stock fully paid in the hands of all parties. (Ch. 51, § 54.)

Stock once issued to a stockholder may be purchased by another without assumption of any liability to creditors, regardless of the amount which such second stockholder paid therefor, or of the amount paid therefor by the original subscriber, even though such second stockholder may have known at the time of purchase that the stock had not been fully paid for. *Morgan v. Howland*, 89 Me. 484. *Libby v. Tobey*, 82 Me. 397. The liability for the deficiency does not, as in most states, follow the purchaser.

This liability may be enforced by the corporation or by the creditors, but it applies only to parties taking stock directly from the corporation. A purchaser in the market, a second holder, for less than par value is not liable. *Maine Trust & Banking Company v. Southern Loan & Banking Company*, 92 Me. 444. Nor does it constitute a defence that the stock certificates have never been issued to the defendant. A subscriber for shares is a member of the corporation, although he has received no certificate of stock, and is a stockholder within the meaning of the statute, making stockholders of the corporation personally liable for its debts. *Hawes v. Anglo Saxon Petroleum Company*, 101 Mass. 385. "This statutory liability of stockholders for the debt of the corporation is a departure from the established rules of law, and is founded solely upon grounds of public policy, depending entirely upon express provisions of statute law. There is no contract express or implied between such stockholder and the creditor. Such liability is therefore to be construed strictly and not extended beyond the limits to which it is plainly carried by such provisions of statute." *Libby v. Tobey*, 82 Me. 404.

§ 73. To the Corporation.

Section 96, providing that the capital stock stands for the security of all creditors and that no payment for such stock shall be deemed a payment within the purview of the chapter unless *bona fide* made in cash or its equivalent, relates to the rights of creditors only.

As between the stockholders and the corporation itself, the liability is definite. If the certificates of stock issued to the stockholders have inscribed thereon any language indicating that the stock is fully paid and non-assessable, the corporation cannot call on such stockholder beyond the original amount which he paid for it. It will be estopped to deny full payment and it certainly could not collect of any transferee. Even though fully paid stock is issued for property, but at an overvaluation so that there might be a liability to creditors, yet there is no promise to the corporation to pay any deficiency, either express or implied, and no obligation can therefore be transferred from the original holder to the transferee, nor does it make any difference that such stockholder purchased with notice of the overvaluation. *Libby v. Tobey*, 82 Me. 397.

If the certificates do not contain special language, but are in the usual form, setting out that the holder thereof is the owner of a certain number of shares of the capital stock of the company and the purchaser buys them of the corporation, paying therefor less than par, but with no understanding between the parties that he is to pay more, the same result will follow.

If the stock is subscribed for or purchased from the company or an express promise is made to take and pay a certain amount for it, the company can enforce the contract just as any individual could. If the contract, however, is to pay for the stock as assessments thereon may be levied by the company, then the provisions of the statute apply, and unless there is in addition an express agreement by apt words to become personally liable to the company for such payment, the only remedy of the company for non-payment is a sale of enough

shares to meet the assessment, such sale to be at public auction after publication of notice thereof in some newspaper printed in the town, or, if not any, in the county where the clerk's office of the company is established. (Ch. 51, §§ 39, 40.)

There is no liability in Maine as in some states for any special class of debts, such as those of laborers or employees.

§ 74. Representative Liability.

Persons holding stock as executors, administrators, guardians or trustees assume no personal liability as such by reason of their purchase or holding of stock, but the estates and funds in their hands are liable instead to the same extent as the testator, intestate, ward or *cestui que trust* would be if competent to hold the stock in his own name. (Ch. 51, § 93.)

In the same manner a pledgee of stock, holding the certificate of stock for security merely, is not subject to any of the liabilities of a stockholder unless he appears on the books of the corporation as the absolute owner. (Ch. 51, § 94.) Nor is any personal liability assumed by one who holds stock as trustee for the benefit of the corporation. To all intents and purposes such stock is held directly by the corporation itself. *American Railway-Frog Co. v. Haven*, 101 Mass. 398.

§ 75. Can Liability be Changed in other States.

Many text-book writers answer this question in the affirmative on the authority of *Pinney v. Nelson*, 183 U. S. 144, but as previously stated (§ 17), this decision rested wholly on the legal principle that the charter, "the contract of the stockholders," was to be construed under the rule that where the parties making the contract have in view some other law than that of the place where the contract was made, such other law will control and the Colorado charter of this corporation specifically provided that it was to do business in California where the local stockholders' liability law was different. Other decisions cited by text-book writers seem to the author to be *dicta*.

The certificate of incorporation is a contract, not only between the stockholders themselves but collectively with the state. When silent as to other states the stockholder contracts with reference to all the laws of the incorporating state. *First National Bank v. Consolidated Mining Co.*, 42 Minn. 327.

His liability to creditors is part of his primary contract to membership to be determined by the laws of that state. *New Haven Co. v. Lyndon Spring Co.*, 142 Mass. 349.

Wherever a corporation does business it carries its charter and it is the same abroad as at home. A foreign statute undertaking to impose a new liability is an attempt to change the fundamental contract of the stockholder without his consent. The act of the corporation in accepting terms of admission to the foreign state is not the act of the individual stockholder nor within the implied powers of the majority. Whenever a corporation makes a contract itself it is the contract of the legal entity of the artificial being created by the charter, and not the contract of the individual members. *Railway v. Gebhard*, 109 U. S. 527; *Railroad v. Kountz*, 104 U. S. 12; *Relf v. Roundell*, 103 U. S. 226.

To hold that this can be modified is to find that it is competent for one state to alter, amend or repeal the charter of a corporation existing under the laws of another state, and this California herself has contended. *Johnson v. Good-year Mining Co.*, 127 Cal. 4.

A foreign state can doubtless regulate and govern the natural interpretation and obligation of all contracts entered into in such foreign state except so far as they depend on the extent of the powers conferred by the charter on the corporation itself. These a foreign state cannot enlarge or abridge. *Hutchins v. New England Coa Mining Co.*, 86 Mass. 580.

An attempt to do so would seem to violate the second section of the fourth article of the Constitution of the United States within the principle applied in *Blake v. McClung*, 172 U. S. 239.

§ 76. Stockholders of Foreign Corporations.

The question as to liability of residents of Maine who are stockholders in corporations created under the laws of other states, to creditors residing out of the state, has frequently arisen in the courts. This is a question of comity between the states, and whenever the proceedings in the Maine courts are such as would be enforced in the courts of the state where the corporation has its home, the courts of Maine feel constrained to hold the principle of comity between states broad enough to extend recognition to the plaintiffs in such actions.

In *Childs v. Cleaves*, 95 Maine 498, where an attempt was made to enforce the double liability provision of the Minnesota constitution, it appeared that the plaintiff had been appointed receiver of the company by the courts of Minnesota, and had been directed by the courts of that state to institute in his own name, as receiver, such auxiliary actions as might be necessary to enforce the liability of non-resident stockholders. It was held that the due administration of justice required that all stockholders, no matter where they might reside, should be compelled, by proceedings somewhere, to perform the statutory obligations towards creditors of the corporation which they had assumed by becoming such stockholders; that for the purpose of ascertaining the assets and liabilities of such corporation they were represented by the corporation itself or by its receiver and were bound by the adjudication of the court of Minnesota, though not personally made parties to the proceedings there; that as such action was enforced for the benefit of all creditors of the corporation, no rights of domestic creditors could interfere with the action, and inasmuch as the Minnesota statute authorized collection of only so much as might be necessary to satisfy the debts of the corporation and required a *pro rata* distribution among the stockholders, the action could be maintained in Maine.

In *Hale, Receiver, v. Cushman*, 96 Maine 148, the liability of the defendant stockholders having been defined by the last quoted case, the only defense raised was the statute of limitations. The court held that the statute would begin to

run not from the time when the contract was made or the liability incurred which formed the basis of the cause of action, but only from the time when there was first a breach of duty on the part of the stockholders, which would be when the liability of the stockholders to the creditors of the corporation to make good the deficiency of corporate assets was first judicially ascertained and declared by the courts of Minnesota, on the ground that such liability was not primary to be enforced as soon as the debt matured, but secondary like that of a guarantor, to be enforced only when the liability of the corporation had been determined and the amount of the deficiency definitely ascertained.

In *Abbott v. Goodall*, 100 Maine 231, creditors of an insolvent Colorado corporation brought a bill in equity in Maine, on behalf of themselves and other creditors who might choose to come in, against Maine stockholders, to enforce their double liability. It was held that the Colorado statute contemplated a *pro rata* contribution by all stockholders for the benefit of all creditors and hence the corporation ought to be a party to the proceedings so that the court could ascertain the deficiency of assets and the amounts due the several creditors; that the courts of Maine had no jurisdiction over the corporation itself and could not determine such deficiency and therefore the action could not be maintained in Maine; that comity between states would not require Maine to enforce a remedy against its citizens on a liability created by Colorado, which would place them in a worse position than that occupied by citizens of Colorado. An almost precisely similar case is *Clark v. Knowles*, 187 Mass. 35.

Pulsifer v. Greene, 96 Maine 438, was an action brought by creditors of a Kansas corporation to enforce double liability of Maine stockholders. The court held that, having become a stockholder in a Kansas corporation, the defendant must be held to have contracted with reference to and agreed to be bound by the laws of that state; that under such law he was under a several and not a joint liability to the whole amount of his stock, in favor of the judgment creditor of the corporation first suing therefor; that he had the same right

to enforce contribution as if he resided in Kansas; that having accepted his stock with knowledge, express or implied, of such law, he should be held to the contract which he made.

There seems, in fact, to be an increasing tendency on the part of the courts to enforce extraterritorially all statutory obligations, except where the rights of citizens of the forum are thereby prejudiced.

§ 77. Attachment and Sale of Stock.

Whenever it is desired to attach shares of stock owned by a stockholder in a Maine corporation, an attested copy of the writ with a notice thereon of the attachment, signed by the attaching officer, shall be left with the clerk, cashier or treasurer of the company. (Ch. 86, § 28.) If the number of shares held by the defendant is not known, the officer making the attachment may exhibit the writ to the officer of the company having custody of the account of shares and request of him a certificate of the number of shares held by the defendant. If such officer of the corporation unreasonably refuses to give it, he is liable in double the damage occasioned by his refusal. (Ch. 86, § 28.)

An attachment of shares of stock constitutes a lien on such shares and on all accruing dividends. If the same shares are subsequently attached by another officer, he must give notice thereof to the officer who sells them under the first attachment, otherwise such first officer is not liable if he pays any balance of the proceeds of such sale to the debtor. (Ch. 89, § 23.)

An attachment of shares of stock may be vacated by giving to the officer for the benefit of the plaintiff, a bond of indemnity. (Ch. 86, § 79.) In such cases the amount of the bond may be agreed to by the plaintiff or his attorney, or fixed by any justice or clerk of the Supreme Judicial or Superior Court, and the reliability of the sureties may be approved in a similar manner. (Ch. 86, § 79.)

If shares of stock are not attached on mesne process, an officer desiring to seize them on execution may leave a

copy of such execution with the treasurer, cashier or clerk of such company, and the property shall be considered as seized on execution from that time. (Ch. 89, § 13.)

In selling shares of stock on execution, the officer must give notice in writing of the time and place of sale to the debtor by leaving it at his last and usual place of abode, and also public notice by posting it in one or more public places in the town where the sale is to be made and in two adjoining towns thirty days at least before the day of sale, and publishing an advertisement of the same three weeks successively before the day of sale in some newspaper printed in the county, if any, and if not, in the state paper. (Ch. 89, § 16.) At the time and place appointed the officer may proceed to sell the stock at public auction, accounting to the creditor for the amount of the execution, less the cost of sale. If the stock sells for more than is due, the balance should be paid to the debtor. Within fourteen days after the sale the officer should leave an attested copy of the execution and his return thereon with the officer of the company whose duty it is to record transfers of shares, and the purchaser will thereupon be entitled to a new certificate of the shares bought by him and will also be entitled to all dividends which accrue after such stock was attached in the suit. (Ch. 89, § 15.)

Provision is also made whereby the amount which a stockholder of a corporation is liable to pay to a judgment creditor thereof may be attached by a creditor of such judgment creditor, by trustee process served on such stockholder at any time after the commencement of the judgment creditor's action against him. (Ch. 91, § 36.)

§ 78. Enforcement of Pledges of Stock.

When certificates of stock have been pledged for payment of money or performance of any other thing, and there is failure to pay or perform, such stock may be sold in the manner provided in the contract creating the pledge if in writing, or the pledgee may give notice to the pledgeor that he intends to sell such stock to enforce payment by leaving a

copy of the notice with the pledgeor, if his residence is known, or publishing it at least once a week for three successive weeks in some newspaper in the city or town where the pledgee resides, if any, otherwise in some newspaper in the county or in the state paper. Such notice, together with an affidavit of service, should then be recorded in the clerk's office of the city or town where the pledgee resides. (Ch. 96, § 77.) If the pledgeor does not then perform the agreement within sixty days after the notice is so recorded, the holder may sell the stock at public auction and apply the proceeds to the satisfaction of the debt and expenses of notice and sale, and if any surplus remains it should be paid over to the party to whom it belongs. (Ch. 96, § 78.)

CHAPTER XI.

STOCKHOLDERS' MEETINGS.

§ 79. Place.

Several states permit the holding of stockholders' meetings at any place within or without the state, which may be determined upon by the stockholders. This has always seemed to the author to be a somewhat dangerous and questionable practice. Whether corporate acts fundamental in their nature can be performed beyond the limits of the sovereignty creating the corporation is not well settled. Such charters must remain unsafe until their validity has been better judicially determined. Frost on "Incorporation and Organization of Corporation" says, page 98, "Unquestionably the legislature has the legal right, in the absence of constitutional provision, to provide that all meetings of corporations, whether organization or otherwise, may be held outside the state.

Yet such meetings have been held absolutely void: *Duke v. Taylor*, 37 Fla. 64; *Craig Silver Co. v. Smith*, 163 Mass. 262; *Hodgdon v. Duluth, etc. Rwy.*, 46 Minn. 454; *Harding v. American, etc. Co.*, 182 Ill. 551.

Other states hold them voidable only: *Wright v. Lee*, 2 S. Dak. 596; *Handley v. Stutz*, 139 U. S. 417.

As the validity of all meetings should be above suspicion it is a serious question whether the privilege of holding stockholders' meetings in a foreign state is not an element of weakness even though often a convenience. Minority stockholders have a diminished sense of security when the corporate records are beyond the jurisdiction of the courts of the incorporating state. Fraud and operation are more easily accomplished in matters affecting the regulation of the

internal affairs of his corporation. They can look only to the court of the incorporating state and their substantial reliance today is upon the broad equity powers of that court. As a general rule, courts decline to assume jurisdiction of causes relative to the internal affairs of foreign corporations. From the standpoint of business, it is doubtful if capital can be as easily procured with transitory records and meetings held abroad.

In Maine it was early decided by the courts that all meetings of stockholders must be held within the state. A corporation is an artificial being, existing only in contemplation of law. The natural persons, who become the incorporators of the company, and their associates and successors, have no such power individually. The charter of the corporation confers upon it a new faculty, which it can have only by virtue of the law which confers it, and that law is inoperative beyond the territorial bounds of the legislative power by which it is enacted.

For these reasons the court of Maine has held in *Miller v. Ewer*, 27 Me. 509, and *Freeman v. Machias Water Power & Mill Company*, 38 Me. 343, that the statutes contemplate the creation and action of corporations within the state; that there all meetings are to be held and their officers chosen by virtue of the laws of the state, and therefore only where those laws are operative; that a corporation can hold no meeting for the election of its officers or the regulation of its affairs without the limits of the state, and that all such meetings and proceedings are without right or authority and wholly void. This relates, however, to stockholders' meetings only, and not to directors' meetings.

Meetings of stockholders may be held at any place within the state. The by-laws should designate the regular place of meeting, but a meeting may be called to be held at some other place within the state provided the call and the notice issued expressly so state.

When all, or substantially all, of the stockholders reside out of the incorporating state a safe and common method of carrying on corporate business is to call a meeting of the

stockholders at the most convenient place, give the usual notice, conduct the meeting as if held under the statute and by-laws, and when the will of the majority has been ascertained prepare proxies to be used at a legal meeting within the state of incorporation for ratifying the action so taken. Notice of such subsequent meeting should be specific and at such meeting the minority will assent for obviously practical reasons. The meeting so held with proxies alone is absolutely legal and the stockholders have had all the practical advantage of meeting and discussing the business of the company as though the legal meeting had been held in their own state.

§ 80. Call and Notices.

It is not technically necessary that any notice be issued for the regular annual stockholders' meetings unless the by-laws so require. The by-laws provide for such meetings and usually provide for notice of the meeting, and designate the officer of the company, usually the clerk of the corporation or secretary of the board of directors, who shall send such notice. The better and usual practice is to issue notice for the annual meeting.

Special meetings must be called by some officer, as they do not occur at any regular interval. The by-laws usually provide that they may be called by the president, or by a certain number of the directors, or by stockholders representing a certain percentage of the capital stock outstanding. When such call is issued, it is directed to the officer designated by the by-laws as the person to issue notices, and on receipt of such call it becomes his duty to send notices to the stockholders. Notice should be given to every stockholder entitled to vote at the meeting. A stockholder to whom notice is not sent will not be bound by the action of the meeting, unless he knew of it and took part in such meeting, in which case he will be considered as having waived notice. The by-laws usually provide that such notices shall be sent to stockholders at their address on the record books of the company, but that if no address is given, they shall be addressed to the

stockholder at the company's principal office, and notice so sent is legally sufficient, although it may never have reached the stockholder. Stockholders are supposed to notify the corporation of any change in address.

All corporations are required to keep at the clerk's office in the state "a book showing a true and complete list of all stockholders, their residences, and the amount of stock held by each." (Ch. 51, § 22.) This book is competent evidence in any court of the state to prove who are stockholders of the corporation. It must be open at all reasonable hours to the inspection of persons interested. If the corporation maintains a treasurer's office in the state where a stock book is kept, then it is not necessary for a stock list to be kept by the clerk (Ch. 51, § 22.) Persons interested, who are entitled to inspection of this stock record, are stockholders and creditors of the company. (See § 108 following.)

The statute provides that corporations may provide by their by-laws for the manner of calling and conducting meetings. (Ch. 51, § 50.) The notice should state, not only the time and place of the meeting, but also the business to be there transacted. When, however, the by-laws provide that officers elected shall hold office for one year and until others are chosen in their stead, it is unnecessary that the notice of the annual meeting should specify that officers are to be chosen. *Sampson v. Bowdoinham Steam Mill Corporation*, 36 Maine 78. Stockholders are presumed to know the contents of the by-laws and therefore to know that officers will be elected at the annual meeting.

No business can be transacted at a special meeting unless the call therefor distinctly states the object of the meeting. The by-laws should not be changed, nor should any important business be transacted at an annual meeting unless the notice so provides, but as the annual meeting is for the transaction of all business incident to the corporate powers and interests, any ordinary business can be transacted without provision in the notice in the absence of provision in the by-laws to the contrary. Fundamental matters, however, require notice.

Notice of any stockholders' meeting may be and frequently is waived by the stockholders. When the stockholders are few in number meetings are frequently held by waiver of notice. The statute provides that when all the members of a corporation are present in person or by proxy at a meeting, and sign a written consent on the record thereof, such meeting is legal. (Ch. 51, § 17.) This should always be done if possible at the first meeting for organization, and it is always wise to incorporate such a written consent in the records of other meetings where possible. There is no special statutory provision regulating the call or notice of meetings for any particular purposes. The method provided for by the by-laws of the company is sufficient, no matter what action is to be taken at the meeting.

If for any reason there are no persons qualified under the by-laws to call a meeting or to issue notices thereof, any three members of the corporation may make a written application to a justice of the peace where it is established, if local, or if not, where it is desired to hold the meeting, and thereupon such justice may issue his warrant to either of such persons, authorizing him to call a meeting by giving written notice thereof to each member of the corporation, or by publishing same in a newspaper in the county seven days before the meeting. (Ch. 51, § 13.) At the time and place appointed he, or the person to whom his warrant was directed, may call the meeting to order and proceed until a clerk is chosen and qualified. (Ch. 51, § 14.)

§ 81. Quorum.

The statute provides that corporations may determine by their by-laws the number of members that constitute a quorum. They can thus provide for more or less than a majority and sometimes provision is made that any number assembled shall constitute a quorum, requiring only a majority vote of those present to act.

If the by-laws provide that a quorum shall consist of a majority of the capital stock, without adding the qualifying

words, "issued or outstanding," the court has decided that a quorum would be a majority of the entire capital stock of the corporation, regardless of the amount issued. *Ellsworth Woolen Manufacturing Co. v. Faunce*, 79 Me. 440.

In this case the by-laws provided the quorum should be "a majority of the stock." The authorized stock being four hundred shares, the court held that a majority was two hundred one. In *Castner v. Twitchell-Champlin*, 91 Me. 524, the court distinguished this case. The by-laws provided a quorum should be "at least one-third of the stockholders, holding at least one-third of the shares of stock." The authorized capital stock was six hundred shares. Only ninety-six shares had ever been issued, but the court said that one-third of the stockholders owning one-third of the ninety-six shares constituted a quorum, and that it is natural to suppose that the stockholders had in mind for their by-laws stock which was owned and could be voted; otherwise, it might well be that no quorum could ever be present. The court cites *Greenpoint Sugar Co. v. Whitin*, 69 N. Y. 328, where the by-law provided "stockholders owning at least two-thirds of the capital stock" and two-thirds of 2000 shares were held to constitute a quorum though the authorized capital was 2500 shares.

§ 82. Who May Vote.

Corporations may determine by their by-laws by whom all officers, except the president and directors, shall be elected, the mode of voting by proxy and the number of votes to be given to shareholders. (Ch. 51, § 50.) Unless otherwise provided, each stockholder is entitled to one vote for each share of stock standing in his name on the books of the corporation, but provision may be made by the by-laws for cumulative voting or any other method desired, as previously mentioned. (See § 27.)

Preferred stockholders and holders of other classes of stock may or may not vote, as the by-laws provide.

The stockholder who has transferred, mortgaged or pledged his stock to another for security merely, and it so appears on the books of the corporation, continues to have the right to vote on such stock until his right of redemption ceases, and the pledgee will not be entitled to vote thereon. (Ch. 51, § 19.)

The transfer books are usually closed a certain number of days before each meeting and persons purchasing stock during that interval do not become stockholders of record, and so are not entitled to notice of the meeting or to take part therein. (See § 57.)

A corporation holding stock in another corporation may vote at its stockholders' meeting through some duly authorized representative. Under section 49 of the statute, authorizing the creation of various classes of stock with such voting powers as shall be fixed and determined in the by-laws, provision is frequently made that preferred or other special kinds of stock shall have no voting powers. The advantages and disadvantages of such provisions have been previously discussed. (See § 47.)

Shares hypothecated to the corporation cannot be represented at a stockholders' meeting. (Ch. 51, § 18.) The same rule will apply to treasury stock, that is, unissued stock or stock which has once been issued by the corporation, but has been donated or transferred to it to be sold for the purpose of raising funds for the company. (See § 56.) If, instead of transferring such donated stock to the corporation, it is transferred to someone to hold as trustee for the benefit of the corporation, such trustee is not entitled to vote such stock. Such privilege would not only be unreasonable and unfair, but might lead to great abuses. *American Railway-Frog Co. v. Haven*, 101 Mass. 398.

Capital stock which has never been issued cannot be voted even by the corporation. It is potential rather than actual. *Castner v. Twitchell-Champlin*, 91 Me. 524. No person can give, by right of representation, a greater number of votes than is allowed to anyone by the charter or by-laws. (Ch. 51, § 18.)

§ 83. Proxies.

Any stockholder may be represented by proxy, which must be granted not more than thirty days before the meeting named therein. (Ch. 51, § 18.) Provision is also made for representation by general power of attorney, which shall be good until revoked. (Ch. 51, § 18.)

Usually the by-laws regulate voting by proxy. It is not necessary that persons holding proxies should be stockholders. Proxies in the usual form contain a power of substitution, authorizing the person named therein to substitute someone in his stead to act at the meeting. Either a proxy or general power of attorney may be revoked at any time, so that it sometimes happens that two or more persons appear at a meeting holding proxies for the same stockholder. In this case the person holding the proxy last executed is legally entitled to represent such stockholder. The date is *prima facie* proof of the time of execution, but not conclusive. The actual truth is to govern.

§ 84. Pooling Agreements.

There is no statute in Maine relative to syndicate or pooling agreements or voting trusts. The only decision of our courts is *Hall v. Merrill Trust Co.*, 106 Me. 465. In this case two sets of stockholders transfer their shares to a trust company to prevent a third set from acquiring control under an agreement that new certificates should be issued to the trustee; that the stock should be voted as three specified stockholders should direct; that the dividends should be sent to the owners, and that the trustee should sell the shares for such price and at such time as a majority of the Maine stockholders might direct. The court held this agreement was valid, creating a power of sale with provision for voting, and was not a voting trust with incidental power of sale; that it was more than a power of attorney and not revocable at the pleasure of the parties; that an agreement entered into between nine stockholders to transfer their stock to a trustee

to be held for a common purpose was a mutual contract, the consideration of which was valid and sufficient. The trust was to continue four years. The court said that to permit any party to the agreement to withdraw from it at his pleasure would be to sanction the breaking of the contract. While, therefore, the contract in question did not constitute a voting trust it yet contained many of the elements of one and indicates in some degree what the court in Maine would hold with regard to voting trusts.

As the courts of Maine follow closely the courts of Massachusetts in common law matters, it is probable, should the question arise, that the decision of the Massachusetts court in *Brightman v. Bates*, 175 Mass. 105, would be upheld. In that case a syndicate was formed to control shares of a railway company with the provision that a committee of five of the subscribers should have the power to vote the entire syndicate stock at each annual meeting for a period of not less than three years for a board of directors. The court said that "combination for common interest is necessary and is constantly taking place. The fact that they thereby expect gain and advantage to accrue to them does not make the combination unlawful, unless it is to be at the expense of the corporation or intended to work a wrong to other stockholders. There is no doubt that the stockholders themselves might have stipulated that they would vote for certain men for directors at the ensuing annual meetings; if so, they could agree that others might do for them what they might do themselves. There is nothing in the policy of the law to prevent a majority of the stockholders from transferring their stock to a trustee with unrestricted power to vote upon it, nor is the fact that the trustees have to unite to elect their candidate proof that their intention is unlawful. There is no reason why a majority should not agree to keep together."

Such agreements have been sustained in many states and condemned in others, but it is believed they would be sustained in Maine if it appeared that the agreement was limited to a short term of years; that the trustees are themselves stockholders having an interest in the corporation; that the trustees

are not authorized to vote for a sale of the franchises or the entire assets of the corporation or to dissolve the corporation, and that there is no intention to work any wrong to the other stockholders.

§ 85. Cumulative Voting.

Under the provisions of Chapter 51, section 50, allowing corporations to determine by by-law the number of votes to be given by share holders, provision may be made for cumulative voting. This is frequently practiced among modern corporations, as it gives the minority stockholders greater rights and privileges. It usually applies, however, only to voting for election of directors.

By cumulative voting is meant the right of a stockholder to cast as many votes for any single director as he holds shares of stock multiplied by the number of directors to be elected, or to distribute them among any two or more as he pleases.

Under the ordinary method the holder or holders of the majority of the stock can elect the entire board of directors and the holders of the minority practically have no voice in the election. When cumulative voting is allowed minority stockholders by uniting can always elect at least one or two, and so have representation upon the board.

§ 86. Proceedings at Meeting.

At the hour appointed the meeting of stockholders is usually called to order by the clerk and a temporary chairman elected, unless the president or vice-president is present.

The roll should then be called to determine the presence of a quorum. If a quorum is not present an adjournment should be had to some future date.

Provision may be made by the by-laws for the appointment or election of inspectors of elections, whose duty it shall be to investigate and report to the meeting the number of stockholders present, or represented, and the number of shares

held by them. There are no statutory provisions relating to inspectors of elections.

Proof that the meeting was legally called and notified should then be produced by the clerk and report thereon made, since it is useless to proceed should it appear that the meeting has no legal foundation for its existence.

If the meeting is a regular meeting, the minutes of the last regular and all intervening special meetings are usually read and approved, corrections therein being made if necessary. If the meeting is a special meeting records of previous meetings are not usually read.

Reports of the various officers and committees are read and approved or criticised, especially if the meeting is an annual meeting.

Reports are read by the president and treasurer and by the general manager if there is one.

Special reports are also frequently called for from other officers or committees.

Other business attended to is the election of officers, if that is one of the purposes of the meeting.

The directors and the clerk must be elected by the stockholders. The remaining officers may be elected by the stockholders or later by the board of directors as the by-laws of the corporation shall provide. Such officers shall be chosen annually. (Ch. 51, § 20.)

The clerk must be sworn. (Ch. 51, § 20.) The record of his oath should be incorporated in the record of the meeting.

After the elections, unfinished business is usually taken up. This will consist of business that has been discussed at some previous meeting or referred to some committee which has since made its report. Attention is usually called to such unfinished business by the presiding officer.

If there is any new business to be transacted it should then be considered; such as the amendment of the by-laws, change in the capital stock, issue of bonds or the ratification of any proposed action taken by the board of directors.

§ 87. Ratification.

It is usual at the annual meeting of the stockholders to adopt a resolution ratifying the acts of the directors and stockholders during the past year. When the stockholders are conversant with the action which they ratify, such a resolution is not only proper but wise; but it is not only unwise, but of no effect to adopt such a resolution if the stockholders are not acquainted with what has been done. "He who relies upon a ratification has the burden of showing that attempted ratification really ratifies. Neither individuals, nor stockholders in a body, can be said to ratify acts of which they had no knowledge. Such a ratification is ineffective because it really does not ratify. It is a paper ratification only." *Hyams v. Old Dominion Co.*, 113 Me. 300.

"A decent respect for the rights of minority stockholders would require that he who seeks to bind them by votes of ratification should show that the stockholders generally knew specifically what they were voting about. *Land Co. v. Lewis*, 101 Me. 78.

It is a question whether a director is entitled to vote at a stockholders' meeting to ratify a contract made by himself, and a court of equity will undo such ratification if it appears to be fraudulent as against minority stockholders. *Id.*

The better course therefore, if such a resolution is to be adopted, is to read to the assembled stockholders the records of all directors' meetings and if important contracts have been entered into by them, to place them before the meeting so that the stockholders may know fully what they are ratifying.

CHAPTER XII.

DIRECTORS

§ 88. Number and Election.

There is no limitation as to the number of directors, except that there must be at least three. (Ch. 51, § 8.) The statute provides (Ch. 51, § 9) that the certificate of organization shall set forth the number and names of the directors, so that the number must be fixed by associates at their first meeting for organization. If desired to make provision for increase or decrease the by-laws may provide, for instance, that "the number of directors shall be not less than three nor more than six. The number for the first year shall be three and thereafter the number may be increased as above at any annual or special stockholders' meeting, when notice thereof is given in the call." The number may also be changed at any time by amendment of the certificate of organization. (Ch. 51, § 41.) In such case the stockholders may by majority vote change the number of directors and the corporation shall file a certificate thereof with the Secretary of State within ten days, and pay him a fee of \$5.00. (Ch. 51, § 41.)

Directors shall be chosen annually. They continue in office until others are chosen and qualified in their stead. (Ch. 51, § 20.) When directors are not chosen on the date of the annual meeting, but on some subsequent date at an adjourned or special meeting called for that purpose, they will hold their office and perform their duties as if chosen on the date of the annual meeting, unless a majority of the stockholders file with the clerk within six months after such election, written objections thereto. (Ch. 51, § 15.)

When such notice is filed it is the duty of the clerk to call a stockholders' meeting, stating in the notice that objections have been filed, and the purpose of the meeting, and the officers elected at such meeting shall hold their office until others are chosen and qualified in their stead. (Ch. 51, § 16.) There is no objection to electing a certain proportion of the directors each year to hold for a term of years. (Ch. 51, § 20.) When the board is large, provision for this is frequently made in the by-laws to prevent sudden changes in the entire board.

There is no statute authorizing the removal of a director from office. The by-laws should cover this contingency. The board have no power to remove one of their own number, and as directors are elected for the term of one year the stockholders have no such power when not reserved in the by-laws.

Ch. 51, § 21 makes provision for the election of directors in case of a deadlock by providing that if a corporation shall fail to elect directors within six months after the time provided in its by-laws for annual meeting, the Supreme Court in Equity, on application of at least fifty per cent. of the capital stock, may appoint a board of directors from among the stockholders, or otherwise, to hold until the next annual meeting, or until their successors are elected and qualified.

§ 89. Residence.

There is no provision of statute requiring any of the directors to be residents of Maine. Many states require that one or more directors should continue to be residents of the incorporating state. In practice this is found to be a serious inconvenience. As a rule such resident director is but a nominal stockholder. If special meetings are to be had his waiver of notice must be procured or delay will result. The facility of holding unanimous meetings is hampered. The Maine policy seems to be the wise one.

§ 90. Vacancies.

The by-laws usually provide how vacancies in the board

shall be filled. The remaining directors in office usually fill vacancies. The persons so elected hold until the date of the next annual meeting, or until their successors are elected and qualified. If the entire board is vacant the stockholders can hold a special meeting at any time and elect a new one. Provision may be made in the by-laws, if desired, for the filling of vacancies by the stockholders.

The absence of one of the directors from the country would not deprive the corporation of its right to do business.

§ 91. Qualifications.

"Directors must be and remain stockholders, except that a member of another corporation which owns stock and has a right to vote thereon may be a director." (Ch. 51, § 20.) Any person qualified to be a stockholder (see § 13) and owning at least one share is eligible to the office of director. This includes therefore married women. It is not necessary that any director be a resident of the state of Maine. Whenever a director sells or transfers his stock in the corporation he ceases at once to be a director.

§ 92. Salary.

Directors cannot vote salaries to themselves nor can they vote a salary to one of their number as an officer of the company at a meeting where his presence is necessary to a quorum. Such votes are voidable and if money has been paid under them it may be recovered back. *Land Co. v. Lewis*, 101 Me. 97; *Connors v. Connors Bros. Co.*, 110 Me. 435.

The salary of the directors should be fixed by the stockholders either by resolution or by by-law.

§ 93. Powers.

Directors may be invested by the by-laws with all corporate powers. *Maine M. M. Insurance Company v. Neal*, 50 Me. 301. The general management of the corporate

business is in their hands. The by-laws should specify fully their exact powers and limitations.

Directors have no implied authority to act singly. They can only act as a board unless there be an express or implied authority to act individually. *Morrison v. Wilder Gas Co.*, 91 Me. 492. They may act through committees whose powers should be defined in the by-laws. (Ch. 51, § 20.) They may meet anywhere outside the state of Maine if desired and there transact business and perform all corporate acts not required by statute to be performed within the state. (Ch. 51, § 20.) They may make their own by-laws.

The presence or concurrence of all is not necessary, but a majority may bind a corporation. *Cram v. Bangor House*, 12 Maine 354.

When a majority of the board appear to have been present at the meeting the presumption is that all the members of the board were duly notified to attend. *P. & K. R. R. Co. v. Dunn*, 39 Me. 600.

Directors can give authority only by acting as a board. Individually they cannot bind or affect the rights of a corporation though it is not necessary that their votes should be formal ones or made in formal meetings. *Pierce v. Morse Oliver Co.*, 94 Me. 406. While ordinarily they should act at a directors' meeting, they have power to make ordinary contracts without a meeting or vote. *Sampson v. Bowdoinham Steam Mill Corporation*, 36 Me. 78.

It is the duty of the directors to purchase property (Ch. 51, § 54) required by the corporation, and they have the power to sell the same as they see fit, except such as is essentially necessary for the transaction of its customary business. Such property can only be sold by authority from the stockholders. *Rollins v. Clay*, 33 Maine 132.

At common law corporations have power to sell and convey their property as they think proper. This is incident to the power of acquiring and holding it. This power is in general executed only through some agent of the corporation. *Fitch v. Steam Mill Co.*, 80 Me. 34. When authorized by the by-laws to manage and control the business

of the corporation, they have the power to mortgage its real estate to secure its notes for borrowed money. *Saltmarsh v. Spaulding*, 147 Mass. 224. It is their duty also to declare dividends of profit (Ch. 51, § 34), but they cannot thereby reduce the capital of the corporation to the prejudice of creditors.

In the absence of proof to the contrary whenever an act appears to have been done or authorized by the directors, it will be presumed that they acted at a meeting of which proper notice was given, that a quorum was present, and that this action is in accordance with the charter and by-laws. *Sargent v. Webster*, 13 Met. 497.

§ 94. Meetings.

Provision is usually made in the by-laws for regular directors' meetings usually held monthly, but much of the business of the board is transacted at special meetings called for particular purposes. In either case such notice as is required by the by-laws should be given, or the record of the meeting should show waiver on the part of all the directors.

They may meet at any place within or without the state which they may select, subject to the restrictions of the by-laws. In actual practice it will be found that directors transact much of the ordinary business of the corporation informally and afterwards ratify it at their next meeting. Unless provision is otherwise made in the by-laws a majority of the directors present at any meeting at which a quorum is present, may act. Directors being officers specially elected to act for the company, cannot act or vote at a directors' meeting by proxy. Their powers are discretionary and cannot be delegated.

The clerk of the company does not usually act as the recording officer of the board of directors, but they elect a secretary, who need not be a stockholder or a member of the board.

§ 95. Liability of Directors.

The only statutory liability of directors is found in sec-

tion 34, providing that dividends shall not be made by the directors which shall reduce the capital or the debts due the company, until all debts due from the company are paid, and that any officer or member who votes or aids to make such a dividend shall be fined not exceeding two thousand dollars and imprisoned less than one year. Aside from this there are no provisions whereby directors are fined for their neglect or wilful action. Their liability in any particular case is governed by the common law.

With relation to the duties of directors, as such, in dealing with the corporate property, the court has held in *Clay v. Towle*, 78 Me. 86, that it is their duty to know the financial standing of the corporation and if they have been recreant in guarding the interests intrusted to their care, they cannot be allowed to set up such dereliction of duty to their own profit and advantage over other creditors, who had a right to rely upon their judicious action and discreet management, for the equal benefit of all interested in the affairs of the corporation; and again in *European & North American Railway Co. v. Poor*, 59 Me. 277, that the relation of the directors of a corporation and its stockholders is that of trustee and *cestui que trust*. All acts done by the directors personally should be for the interests of the *cestuis que trust*. Holding a fiduciary relation, they cannot be permitted to acquire interests adverse to such relation. If a director sells to his company, or is a party to a contract with it, his duty as an officer is in conflict with his interest as an individual. In general the common law rule may be laid down as follows:

"The directors of a corporation are liable to the corporation for losses sustained by it as the direct consequence of their fraudulent or wilful acts constituting a breach of trust, of their acts in excess of the authority conferred upon them, not the result of mere mistake or error of judgment, or, by the weight of authority, of their negligence in failing to exercise the care, skill and diligence, in the management of the corporation and supervision of its affairs, which ordinary skilful and prudent men would exercise under similar circumstances. And if they fail to exercise such ordinary care and

diligence, and, as a direct consequence, loss results to the corporation by reason of the fraud, unauthorized acts, or neglect of subordinate officers or agents, they cannot escape liability on the ground that they did not participate in such acts, or on the ground of ignorance thereof. On the other hand, the directors of a corporation are not liable for losses resulting from mere mistakes, either of law or fact, or from errors of judgment on their part, if they have exercised ordinary care and skill, nor for the fraudulent or wrongful acts or neglect of subordinate officers or agents, where they have exercised ordinary care in selecting and supervising them." (Clark & Marshall on Private Corporations, § 746.)

On the question of good faith on the part of directors and the consequences of any fraudulent conduct on their part in the issuing of stock or the conduct of the business of the company see: *Trask v. Chase*, 107 Me. 137; *Livermore Falls Trust & Banking Co. v. Riley*, 108 Me. 17; *Chabot & Raschard Co. v. Chabot*, 109 Me. 403; *Pride v. Pride Lumber Co.* 109 Me. 452; *Cummings Mfg. Co. v. Smith*, 113 Me. 347. and for a discussion of questions of procedure on the part of individual minority stockholders who are desirous of redressing wrongs suffered through improper conduct of the directors, see: *Pride v. Pride Lumber Co.*, 109 Me. 452; *Hyams v. Old Dominion Co.*, 113 Me. 294; *Wells v. Dane*, 101 Me. 67; *Clarke v. Marks*, 111 Me. 218, holding that such stockholder may not proceed in equity on behalf of himself and other stockholders until he can satisfy the court that he has made application to the regular officers of the corporation for redress and they are unable or unwilling to take steps to protect the corporate property and interests. The last case holds that a stockholder's bill is demurrable unless it alleges such applications or shows that application to the officers would be useless.

In *Camden Land Co. v. Lewis*, 101 Maine 97, it was held that directors cannot vote salaries to themselves nor to one of their number where his presence was necessary to a quorum. All matters touching compensation should be definitely fixed by the stockholders in the by-laws.

CHAPTER XIII

OFFICERS

§ 96. Generally.

The statute provides that at organization a corporation shall elect not less than three directors, a clerk, treasurer and any other necessary officers (Ch. 51, § 8), and that corporations shall have a president, directors, clerk, treasurer and any other desirable officers. (Ch. 51, § 20.) It is usual to elect a vice-president and sometimes a second and third vice-president. If the corporation is to do business outside the state a secretary is also elected by the board of directors to act as their recording officer. Other officers sometimes chosen are general manager, registrar, auditor, general counsel, etc.

The directors and clerk must be chosen by the stockholders. (Ch. 51, § 20.) The president must be chosen by the directors. (Ch. 51, § 20.)

A corporation may determine by its by-laws by whom any or all officers, except the president and directors, shall be elected. (Ch. 51, § 50.) It is usual to provide that the directors shall elect or appoint all the officers except the clerk. The stockholders may also provide by their by-laws for the duties of these officers and may fix their compensation. (Ch. 51, § 49.)

When the by-laws provide that officers hold for a year and until others are chosen in their stead, it seems unnecessary to insert in the notice of the annual meeting "that officers are to be chosen." *Sampson v. Bowdoinham Corporation*, 36 Me. 78.

§ 97. President.

The president must be elected by the board of directors

and shall be one of their number. (Ch. 51, § 20.) As the directors must be and remain stockholders (Ch. 51, § 20), the president must hold at least one share of stock. His duties are usually fixed and provided for by the by-laws. He presides over all meetings of the stockholders and of the board of directors, and is usually chairman ex-officio of the various standing committees appointed by the directors. When a corporation does not elect a general manager the president usually has, under the by-laws, during the recess between meetings of directors, chief executive power in relation to the concerns of the corporation and a general oversight over its affairs.

The president, however, is but one of a board of directors. If he is to have general executive authority it should be given to him by the by-laws. If the corporation suffers its president to exercise general authority, it will be bound by his acts, although not authorized by or in violation of the by-laws.

But when a person who was both president and treasurer of a corporation gave a mortgage of all its personal property to pay an existing debt, without previous authority or subsequent ratification of the directors, the mortgage was held invalid although he was also general manager and owned all but two shares of the stock. *England v. Dearborn*, 141 Mass. 590.

It is the president's duty to sign all certificates of shares of stock (Ch. 51, § 36), and either he or the treasurer should sign and verify under oath the annual return of the corporation to the Secretary of State. (Ch. 51, § 28.) He must sign and make oath to the certificate of organization of the company. (Ch. 51, § 9.)

§ 98. Vice-President.

A vice-president usually has few duties, except to take the place of the president during his absence or disability. He must be a director and a stockholder (Ch. 51, § 20), and has power under the statute to sign certificates of shares of stock. (Ch. 51, § 36.)

§ 99. Treasurer.

The treasurer is usually elected by the board of directors, but may be elected by the stockholders at their annual meeting if the by-laws so permit. It is not necessary that he be a director or a stockholder of the company. At organization it is his duty to sign and make oath to the certificate of organization of the corporation. (Ch. 51, § 9.) He is required by statute to give a bond for the faithful discharge of his duties in such sum and with such sureties as may be required. (Ch. 51, § 20.) It is the duty of the treasurer or clerk to ascertain the residences of all stockholders of the corporation (Ch. 51, § 26), and to keep a list thereof, which shall be accessible to all persons interested. (Ch. 51, § 22.) This list should show the names of stockholders, their residences and the amount of stock held by each. Persons interested are stockholders and creditors of the corporation. (See §§ 80 and 108.) Any officer who prevents persons entitled thereto from examining and using this list is liable for all damages occasioned thereby in an action on the case. (Ch. 51, § 23.) Formerly there was a penalty attached by statute to the failure to keep such list, but now there exists simply the provision that it shall be kept, with no means provided to enforce the provision. It has become, therefore, practically a dead letter in the case of corporations doing business out of the state. No clerk should certify the presence of a quorum at any stockholders' meeting unless he has such a list in his possession, in order that he may know the number of shares issued and outstanding.

It is made the duty of the treasurer, when assessments on shares are unpaid, to sell at public auction a sufficient number of them to pay the assessments due. (Ch. 51, § § 39-40.) Either he or the president should sign the annual return made to the Secretary of State. (Ch. 51, § 28.) Notice of an attachment or sale of shares of stock of the corporation may be left by the attaching officer with the treasurer. (Ch. 86, § 28, and Ch. 89, § 13.) In such case it is the duty of the treasurer to exhibit to the officer, if called for, a cer-

tificate of the number of shares held by the judgment debtor. (Ch. 89, § 14.)

The treasurer for the time being of the corporation may prosecute suits pending in the name of his predecessor, or may maintain suits in his own name as treasurer on contracts given to his predecessor. (Ch. 87, § 28.)

Aside from the above statutory duties the treasurer is supposed to receive all funds due the corporation, deposit them in some good banking institution in the name of the corporation, or himself as treasurer of the corporation, and pay them out as may be ordered by the board of directors. He is a mere depositary of the money, having no title to it, and no discretion in paying it out, and is accountable to the company and that alone. *Taylor v. Taylor*, 74 Maine 582.

If the treasurer of a corporation draws and delivers a check of the corporation, signed by him as treasurer, the implied representation that there are funds in the bank to meet it is his own, for which he is personally responsible even though he only signs the check in blank and leaves it with another to fill out and deliver. *Eastern Trust & Banking Co., v. Cunningham*, 103 Me. 455.

In the absence of a by-law, if the treasurer is in the habit of signing the corporation name to notes with the knowledge, and without objection, on the part of the directors, he will be presumed to have authority to do so. *Johnson v. Johnson Bros.*, 108 Me. 272.

§ 100. Clerk.

The clerk need not be a director or stockholder, but must be a resident of the state of Maine. (Ch. 51, § 22.) He is elected by the associates at their meeting for organization (Ch. 51, § 8), but does not sign the certificate of organization.

It is his duty to keep at some fixed place within the state a clerk's office, where he shall keep a list of stockholders, unless the same is kept at the treasurer's office in the state. (See preceding Section.)

He must be sworn (Ch. 51, § 20), and record of that fact should be made. It is usual in preparing the record of a

stockholders' meeting at which a clerk is elected to have the form of oath appear in the record, with the original signature of the officer administering it. If the clerk is not sworn, he is still an officer *de facto* and as such his acts are binding upon third parties. *Simpson v. Garland*, 76 Me. 203.

It is not essential to the existence of a corporation or to its right to maintain suits at law that its clerk should have been sworn or that he should have filed in the office of the register of deeds a certificate of his appointment. *Dam Co. v. Gray*, 30 Me. 547. It is his duty to record all votes of the corporation in a book kept for that purpose. (Ch. 51, § 20.) If the corporation is doing business within the state, the by-laws usually provide that all notices of stockholders' meetings shall be issued and sent out by the clerk, but if the corporation is doing business wholly out of the state, this duty usually devolves upon the secretary of the directors, as he is in closer touch with the board of directors and other officers.

A clerk may resign his office by filing his resignation with the Register of Deeds in the county where the certificate of his election was, or ought to have been filed, and the resignation will take effect from the time of receipt of same by the Register of Deeds. (Ch. 51, § 25.) Whenever a new clerk is elected he should, within twenty days after his acceptance of the office, file a certificate of his election in the registry of deeds in the county where the corporation is located. (Ch. 51, § 24.)

It is the duty of the clerk or treasurer of a corporation owning property subject to taxation on or before the eighth day of April annually, to make return under oath to the assessors of each town in which any of its stockholders reside, of the names of such stockholders, the amount of stock owned by them on the first day of April, and the amount of stock paid in to the corporation. (Ch. 51, § 26.) If, however, the assets and business of the corporation are outside the state, such returns are not required to be made, as stockholders living out of the state cannot be taxed in the state.

The clerk may sign certificates of shares of stock. (Ch. 51, § 36.) He should also certify to the Secretary of State any change in the charter or certificate of organization of the corporation (Ch. 51, § 48), such as an increase of capital stock (Ch. 51, § 41) or a decrease (Ch. 51, §§ 42-47), a change of location of the corporation (Ch. 51, § 56), a change of name (Ch. 51, § 50), a change in par value of shares or the number of directors (Ch. 51, § 41). Notice of an attachment or sale on execution of shares of stock may also be left with the clerk as with the treasurer. (See preceding Section.) Much confusion exists in other states as to the status of the "clerk" of a Maine corporation from the fact that his duties in such states are generally performed by an officer styled "secretary." At organization the clerk in Maine is elected by the associates. Subsequently he is elected by the stockholders at each annual meeting. He is the recording officer of the stockholders and performs the duties named in this section.

§ 101. Secretary.

This is not an office created by statute, but as the clerk is required to be a resident of the state and many corporations transact practically all their business out of the state, a secretary is elected, with duties prescribed by the by-laws, to act as the recording officer of the board of directors. It is usually, in such cases, made his duty also to send out notices of all stockholders' meetings. He need not be a director nor a stockholder. He is not the secretary of the corporation. He is, and his title should be "secretary of the board of directors," holding the same relation to the board of directors that the clerk does to the stockholders. This office is created by the by-laws which should define his duties. He cannot perform the statutory duties of the clerk unless the two offices are united in the one person. He may have the designation of secretary or other appropriate name.

§ 102. Other Officers.

The other officers mentioned in § 95 are not statu-

tory officers. Their duties should be provided for by the by-laws, and the stockholders may impose upon them such duties and responsibilities as they see fit.

§ 103. Liability of Officers.

If any officer of the corporation, charged with the duty of making or publishing any statement in regard to the corporation, neglects to do so, he forfeits five hundred dollars to the prosecutor, to be recovered by an action of debt or an action on the case. (Ch. 51, § 32.) As the only statement required by statute of corporations organized under Chapter 51 is the annual return, provided for by section 28, this provision has no application to business corporations so organized.

If any person fraudulently affixes a fictitious or pretended signature, purporting to be that of an officer of the corporation, to any written instrument purporting to be an evidence of debt issued by such corporation, with intent to pass the same, he is guilty of forgery. (Ch. 123, § 9.)

If an officer of the corporation wilfully signs with intent to issue, or issues any certificate purporting to be a certificate of the ownership or transfer of any stock in such corporation, not authorized by its charter, by-laws or votes, he may be punished by imprisonment in the state prison for not more than ten years, and by fine not exceeding one thousand dollars. (Ch. 123, § 10.)

If the clerk does not file with the Secretary of State a certified copy of any proceedings for the reduction of capital stock, by reason of impairment of the capital, within thirty days after such proceedings are taken, he forfeits one thousand dollars, to be recovered by an action of debt in favor of any existing or future creditor of the corporation first suing therefor. (Ch. 51, § 46.)

Any officer of a corporation, who prevents access to or use of the records or list of stockholders of the company to persons legally entitled thereto, is liable for all damage occasioned thereby in an action on the case. (Ch. 51, § 23.)

Any officer or member of the corporation who votes or aids to make a dividend which will reduce the capital of the company or the debts due it until all debts due from the corporation are paid, may be fined not exceeding two thousand dollars and imprisoned less than one year. (Ch. 51, § 34.)

The cashier or other officer of every bank or other corporation, except business corporations, is required on demand to exhibit to the assessors of any town its stock records, under penalty of the forfeiture of five hundred dollars, to be recovered in an action of debt, half to the prosecutor and half to the state. (Ch. 10, § 32.) This does not apply to business corporations doing business outside the state, as they are not taxable in the state. If the clerk or treasurer of a corporation does not, upon demand by an attaching officer, give him a certificate of the number of shares owned by the defendant in the state, or wilfully gives him a false certificate, he shall pay double the damage occasioned by such refusal or neglect, to be recovered in an action on the case by the creditor. (Ch. 86, § 28.)

An officer cannot apply corporation property in his possession to the payment of a debt due himself from the corporation, without the authority of the directors, nor without their authority can he pay himself with treasury stock. *Camden Land Co. v. Lewis*. 101 Maine 98.

§ 104. Promoters.

Corporations are not liable for the contracts of their promoters made before incorporation. *Bradford v. Metcalf*, 185 Mass. 205.

But if the corporation accepts the benefit of the contract, expressly or impliedly, it must take it with its obligations and burdens and do what the promoters agreed to do. *Robbins v. Railway Co.*, 100 Me. 501; *Tuttle v. Tuttle*, 101 Me. 291.

In some states the corporation is held liable if it afterward ratifies the contracts of its promoters and action may be

brought on the contract itself and not merely on the ground that the corporation has received benefits. *Whitney v. Wyman*, 101 U. S. 394. The Maine court has not yet decided this point but has held in *Mason v. Carruthers*, 105 Me. 392, that promoters stand in a fiduciary relation to the corporation and its future stockholders and owe them the utmost good faith. If they undertake to sell their property to the corporation they are bound to disclose the whole truth. If they fail to do this, or receive secret profits out of the transaction, they are liable. The true test is whether other persons than themselves hold stock in the company and are not made aware of the true state of facts, or are induced to come into it by concealment or misrepresentation. *Purinton v. Life Insurance Co.*, 72 Me. 22.

§ 105. Execution of Deeds and Contracts by Officers.

The general rule is that when a sealed instrument is executed by an agent, with authority, and it appears by the whole instrument that it was the intention to bind the principal and not the agent, it should be regarded as the deed of the principal though signed by the agent in his own name. A contract purporting throughout to be that of the company, signed "J. W. F., Superintendent, M. E., Agent," is the contract of the company. A note reading "We, subscribers for Carmel Cheese Company, promise to pay," signed by three individuals, was held the note of the Cheese Company, it appearing that they were directors and authorized to make the note, and the money was used by the company. *Simpson v. Garland*, 72 Me. 40.

A note reading "we promise to pay," signed "Belfast Foundry, W. W. C., Pres't," was held to be the note of the corporation when he had the authority to so act, *Castle v. Belfast Foundry Co.*, 72 Me. 167, but a note reading "I promise to pay," signed "John T. H., Treasurer St. Paul's Parish," binds the signer personally, *Sturtivant v. Hull*, 59 Me. 172, and a note reading "We promise to pay," signed "O. H., R. T., L. M., President, Directors of Prospect Cheese

Company," was held to bind them personally on the ground that there was nothing in the body of the note or attached to the signature to show that a promise was made by any other person than the signers. *Rendell v. Harriman*, 75 Me. 497. When the deed is executed by an agent, with authority, and it appears by the deed it was the intention of the parties to bind the principal, it must be regarded as the deed of the principal although signed by the agent in his own name. (Ch. 78, § 21.)

For use of seals see § 50, (2).

An agent of a corporation may be appointed without the use of a seal for any purpose. If his acts do not require him to execute a formal instrument under seal it is not necessary even that the authority should be given even by formal vote. The acknowledgment of a corporation deed by the treasurer as "his free act and deed" does not vitiate the deed if in every other respect complete. *Fitch v. Lewiston Steam Mill Co.*, 80 Me. 34.

The deed is still good as between the parties and will pass title to the estate as against the grantor and his heirs. In *Tenney v. Lumber Co.*, 43 N. H. 343, such an acknowledgment was held sufficient.

The presence of a corporate seal upon an instrument purporting to be executed by the corporation, which does not appear to have been affixed by a proper official in the general line of his authority, is not even prima facie evidence that the instrument is the contract of the corporation. *Morrison v. Wilder Gas Co.*, 91 Me. 492.

CHAPTER XIV

CORPORATE BOOKS

§ 106. In General.

The statute provides that all corporations, existing by virtue of the laws of the state, shall keep at some fixed place within the state a clerk's office where shall be kept their records and a book showing a true and complete list of all stockholders, their residences and the amount of stock held by each. (Ch. 51, § 22.) The fixed place mentioned in the statute is the location of the company referred to in Chapter 51, § 9, which provides that the certificate of organization shall state the name of the county where the corporation is located. This location or principal place of business of the company usually corresponds with the clerk's office.

At its place of business, if doing business in the state, a corporation will usually keep its books, other than those mentioned in the statute, such as its day books, journals, ledgers, cash books, etc., its stock book, if it issues many certificates, its stock ledger and stock transfer book. If the corporation simply maintains a principal office in the state, but transacts its business elsewhere, these books are kept at the business office of the company instead of at its office in Maine.

§ 107. Record Book.

As the corporation is a creature of the state creating it, and can only hold its stockholders' meetings within that state, section 22 of the statute requiring every Maine corporation to keep its records at its clerk's office is a very proper provision. Many corporations organized under the laws of

Maine have their property and transact substantially all their business in other states. Frequently such corporations have no stockholders in the state and do business so far away that their stockholders' meetings are held only by proxy, yet the original record book must be kept at the clerk's office within the state, although duplicate record books or copies of the record, certified by the clerk, are usually kept at the business office of the company for convenience. For the manner in which the record should be kept see § 86 preceding. For the duties of the clerk in keeping such books see § 100 preceding, and for rights of persons interested to inspect the same, see the following section. The directors, however, may keep their record books out of the state.

§ 108. List of Stockholders.

If the corporation is not doing business in the state and having therein a treasurer's office where its regular stock book is kept, it should keep at its clerk's office a true and complete list of all stockholders, their residences and the amount of stock held by each. (See § 103 preceding, as to liability of corporations for failure to keep same.) For form of ordinary stock book and general provisions in regard to same, see § 63 preceding. For regulations in regard to transfer of stock subscriptions, see § 66 preceding.

The records and the stock book or list of stockholders must be open at all reasonable hours to the inspection of persons interested. (Ch. 51, § 22.)

In *White v. Manter*, 109 Me. 408, the court held that stockholders had the right at common law to inspect the books and records of the corporation at proper times and for proper purposes. The statute adds to the common law right and removes some of its limitations. The right of inspection is "absolute and unlimited." "The statute does not make the purpose material, and we cannot. Where the right is guaranteed by statute the great weight of authority is that the motive or purpose of seeking to exercise it is not the proper subject of judicial inquiry. The law requires no statement

of any particular interest upon the part of the person demanding the inspection. He must be a stockholder and must prefer his request during reasonable hours, that is all. It has been held that the fact that he is a competitor is not a sufficient reason for denying the right and so, when the purpose is to enable the stockholder to enforce a claim against the corporation itself." But the right to take copies and minutes therefrom is limited to such parts "as concern their interests." They can copy nothing else.

In *Withington v. Bradley*, 111 Me. 384, the direct question arose whether making a list of stockholders "concerned a stockholder's interests," and also whether under the statute he had the right to take a copy of the list irrespective of his motive or purpose. The court said that he could inspect the list but could not make copies if they would serve no practical purpose.

If those in control can prevent a stockholder from obtaining such a list they may thereby perpetuate themselves in power and continue disastrous policies. "He is a stockholder and the taking of a list of stockholders does concern his interest. It therefore follows that in this case the motive or purpose of the petitioner does not affect his right," but "a state of facts might be presented where the purpose of the petitioner was so obviously vexatious, improper or unlawful, that the court might feel compelled to exercise its discretion in the interests of law and justice and decline to issue the writ."

In a more recent case however, *Eaton v. Manter*, 114 Me. 259, the court has gone further and, where it appeared that there were nearly a thousand different stockholders and the petitioner owned only a single share acquired by him solely for the purpose of enabling him to take copies of the list of stockholders in order that he might sell them to brokers and give information with regard to the holdings of the corporation to persons not stockholders, the court said that the case was clearly not within the rule above laid down; that a writ of mandamus has always been a discretionary writ and not a writ of right and while the statutory writ is absolute in terms

it is subject to the implied limitation that it shall not be exercised from idle curiosity or a merely vexatious or unlawful purpose, and declined to issue the writ.

If the right is denied, it can be enforced by writ of mandamus issued against the corporation or the officer having custody of the books and papers, or the party claiming it may rely on the statutory remedy against the officer who prevented such inspection, by an action on the case for the recovery of the damages occasioned by such refusal. (Ch. 51, § 23.)

The expression, "persons interested," in the statute is also undoubtedly broad enough to include judgment creditors of the corporation and probably creditors who have begun suit against the corporation, although they have not yet reduced their claims to judgment.

CHAPTER XV.

PRACTICAL METHOD FOR INCORPORATING A BUSINESS

§ 109. General Instructions.

If a person doing business alone, or several partners in business, desire to incorporate a close corporation they cannot of course always be permitted to own all the business as before. A corporation must have at least three directors, but the ownership of the business is frequently kept in one or two individuals substantially as before by selecting members of a family or intimate friends as the additional directors, to whom are given a share of stock each in order to qualify them. They in turn assign the stock in blank and return it to the principal stockholder who holds it in his possession although the records would show that the stockholders of record were apparently qualified to act as directors. Should the principal stockholder desire at any time to change he can simply write in the name of an assignee in any stock certificate, record the transfer on the stock book, and so disqualify the former director and qualify some other.

While this is frequently done it is not entirely safe as the statute provides that there should be less than three directors "and directors must be and remain stockholders." It is possible therefore that if the corporation became indebted without assets, and the principal stockholder had property, the courts on proper presentation of the facts might find that the corporation was a fraud on creditors and the principal stockholder liable for the debts incurred. The better course is to allow at least the three directors to be actual owners of at least one share each so that there be no dummy directors.

The owner of the business or property to be incorporated

will of course transfer it by proper instrument of conveyance to the corporation, as well as the good will of the business. If it is of value it is better to have the property so conveyed, together with the good will, etc., inventoried, if any stock is to be sold to third parties, so that the stock may be issued for its true value and be actually "paid up stock," in which case there will thereafter be no liability on the part of the holders of such stock to the corporation or to creditors for any indebtedness of the corporation.

If the corporation is to be a close one the appraisal by the board of directors is sufficient. The directors should then adopt a resolution authorizing the taking over of the property, good will, etc., and setting out in the resolution its fair cash value. Additional stock can then be issued for such property and the business then becomes that of the corporation to be operated by it.

CHAPTER XVI.

STATE TAXATION.

§ 110. Franchise Tax.

The only form of tax levied by the state upon any corporation organized under Chapter 51 is a franchise tax, based upon the authorized capital stock of the corporation, regardless of the amount of stock actually issued and outstanding or of the property or assets of the corporation, with no deduction for existing debts or for capital employed outside the state. It is not a property tax, but more in the nature of a license fee. It is imposed only on corporations organized under the laws of the state, and not upon foreign corporations doing business in the state, and is in addition to the property tax assessed by the several towns and cities on the property of the corporations within the state or upon stockholders living in Maine. There is no tax on the transfer of stock certificates. All corporations organized under the laws of the state, except religious, charitable, educational and benevolent corporations, corporations organized under the provisions of Chapter 62 of the Revised Statutes (which includes libraries, lodges and various secret societies, relief or temperance societies, and the various scientific, musical and agricultural organizations which are organized for social or benevolent work rather than as business corporations), and also excepting steam and street railroads, telegraph and telephone companies, express companies and insurance companies, savings banks, loan and building associations and trust and banking companies, are required to make, on or before the first day of June of each year, an annual return to the Secretary of State, signed by the president or treasurer under oath, showing the names of the directors, president, treasurer and clerk, with the

residence of each, the location of the principal office within the state and the amount of their authorized capital stock. (Ch. 51, § 28.) On or before the first day of July of each year, the board of state assessors assesses the annual franchise tax upon the authorized capital stock of each of such corporations and certifies the same to the Secretary of State, who thereupon notifies each corporation of the amount of tax assessed against it. (Ch. 9, § 19.)

The amount of tax assessed is as follows: Five dollars if the authorized capital does not exceed fifty thousand dollars; ten dollars if the authorized capital exceeds fifty thousand dollars but does not exceed two hundred thousand dollars; fifty dollars if the authorized capital exceeds two hundred thousand dollars but does not exceed five hundred thousand dollars; seventy-five dollars if the authorized capital exceeds five hundred thousand dollars but does not exceed one million dollars, and a further sum of fifty dollars for each one million dollars or any part thereof in excess of one million dollars. (Ch. 9, § 18.) This tax becomes due and payable on the first day of September of each year (Ch. 9, § 19.)

Public service corporations, banks and insurance companies pay a franchise tax on an entirely different basis, paying upon their income or business regardless of amount of their capital stock.

Such tax becomes by statute a debt due by the corporation to the state for which an action of debt may be maintained when in arrears for one month and shall also be a preferred debt in case of insolvency or bankruptcy or of the liquidation of the company by any process in court. (Ch. 9, § 20.) The assessment of a franchise tax against the corporation after such proceedings have been begun does not constitute a debt against the corporation. A judgment for the amount of such tax, as above provided, carries with it interest at the rate of ten per cent. after such tax becomes due. (Ch. 9, § 68.) If any corporation neglects or refuses to pay such tax for one year after it is assessed, the charter of the corporation is liable to forfeiture. (Ch. 9, § 21.) Whenever any

such tax is in arrears for six months, it is the duty of the State Treasurer to report the same to the Attorney General, who will make application to the Supreme Judicial Court in equity in the name of the state for the forfeiture of the charter of such corporation, and the court is given power to order such notice as it deems proper, to appoint receivers if necessary, and to issue such injunctions and decrees as the nature of the case may require. (Ch. 9, § 22.)

Whenever a corporation has been excused by the Attorney General (see § 114 following) from making the annual return required by Ch. 51, § 28, and such excuse has been filed with the Secretary of State, no franchise tax is assessed after such filing so long as said corporation remains out of business. (Ch. 51, § 33.)

If such taxes remain unpaid provision is made, Ch. 9, § 23, for advertising that fact, whereupon the charter of the corporation becomes automatically suspended on the first day of the following December but may be revived on payment of taxes due. See § 44 for full discussion.

CHAPTER XVII.

LOCAL TAXATION

§ 111. Taxation of Corporations having no Property in Maine.

Clerks and treasurers of all corporations, excepting business corporations organized under Ch. 51, holding property liable to be taxed, are required to ascertain the residences of stockholders thereof, and on or before the eighth day of April to annually return to the assessors of each town in which any of the stockholders reside, the names of such stockholders and the amount of stock owned by them on the first day of such April. (Ch. 51, § 26.) This does not therefore apply to ordinary business corporations. If the assets and business of a corporation are outside the state, it has no property liable to be taxed, and in such a case no such return is required to be made.

When a corporation, therefore, has all its assets and transacts all its business, except the holding of its stockholders' meetings, outside the state, neither the property of the corporation nor the shares of its capital stock owned by non-residents are liable to taxation in Maine.

It is not within the scope of this volume to discuss the local taxation of corporations created under Chapter 51 and having property in Maine liable to taxation. Such property is taxed virtually the same as property of individuals. The discussion would expand the volume to undue limits.

CHAPTER XVIII.

INHERITANCE TAX

§ 112. In General.

Chapter 69 of the Revised Statutes provides for taxation by the state of all property passing by will or by the intestate laws of the state to certain classes of heirs or legatees subject to certain exemptions. (See complete copy of statute later in this volume.)

In general it may be said that property so passing to the husband, wife or direct heirs, is subject to a tax of one per cent. on all sums above ten thousand dollars if it does not exceed fifty thousand dollars; one and one-half per cent. if it exceeds fifty thousand dollars and does not exceed one hundred thousand dollars, and two per cent. if it exceeds one hundred thousand dollars.

Property passing to near collateral relatives is subject to a tax of four per cent. on sums in excess of five hundred and not exceeding fifty thousand dollars; four and one-half per cent. if it exceeds fifty thousand dollars and does not exceed one hundred thousand dollars, and five per cent. above one hundred thousand dollars.

Chapter 69, § 24 provides that when personal estate thus passing from a deceased person who was not a resident of this state consists of stocks, bonds or evidences of indebtedness of a Maine corporation, no inheritance tax shall be assessed on it unless the corporation shall at the time of such decease have tangible property within the state exceeding one thousand dollars, and provision is made that upon filing a certificate in the office of the Secretary of State satisfying the Attorney General that the corporation has no such property in the state he shall, on payment of a fee of

five dollars, (Ch. 118 § 15) issue his certificate to that effect whereupon such shares of stock may be transferred by the corporation, but no corporation shall transfer any such securities until such certificate has been filed and the tax paid, and any administrator or executor who so transfers any securities until the tax has been paid shall be personally liable.

Before any corporation therefore should issue a new certificate of stock in place of one which has been assigned by an executor or administrator its officers should ascertain if this inheritance tax law has been complied with.

To avoid delays and trouble on the part of individual estates it would be wise for all corporations organized under the laws of Maine, but carrying on their business in other states, to apply for and obtain the certificate of the Attorney General that they had less than one thousand dollars of tangible property in the state, as otherwise it may be necessary each time stock in such companies is transferred at the decease of the owner, that such certificate be obtained.

CHAPTER XIX.

REPORTS

§ 113. Annual Report.

The only report or return required from a corporation organized under Chapter 51 and having no property within the state, is the annual return made to the Secretary of State on or before the first day of June. (See § 110 *ante*.) Prior to the first day of June the Secretary of State forwards blank forms for the purpose to all corporations.

§ 114. Corporations Excused.

Whenever a corporation has ceased to transact business, application may be made under oath by any officer of the corporation to the Attorney General setting out that fact, and upon payment to him of a fee of \$5.00 (Ch. 118, § 15), he will file a certificate of the fact with the Secretary of State and give a duplicate certificate to the corporation. Thereupon the corporation will be excused from filing its annual returns with the Secretary of State until such time as it may again resume business. (Ch. 51, § 33.)

Any corporation having filed such certificate and desiring to again engage in business may do so at any time upon simple notification to the Secretary of State of such desire, and thereupon it becomes liable to make returns thereafter. As the franchise tax upon corporations is assessed only upon such corporations as are required by law to make annual returns, the effect of such excuse is to relieve the corporation from payment of all franchise taxes, which would otherwise be assessed, during the time that such certificate is on file. (Ch. 9, § 18.)

§ 115. Local Tax Report.

Cashiers of banks and trust companies, and clerks or treasurers of all other corporations, except as hereinafter stated, are required to make a report on or before the eighth day of April annually to the assessors of each town in which any of its stockholders reside, showing the names of such stockholders, and the amount of stock owned by them on the first day of such April, also the amount of stock paid in, and in the case of banking companies, the value of the real estate owned by such bank as a basis of the taxes of such property. (Ch. 51, § 26.) If the corporation has its assets and transacts its business outside the state, this provision will not apply to it.

§ 116. Corporation Income Tax Report.

It is not intended here to explain at any length the nature of the act of October 3, 1913, amended September 8, 1916, commonly known as the Corporation Income Tax Act. It is an act of Congress providing for an annual return by all corporations, wherever located, showing their net income for the year on which an annual income tax is assessed by the government. The act is too long and the decisions of the department and the methods of computing the tax too complicated for this book.

CHAPTER XX.

SUITS, ATTACHMENTS, EXECUTIONS

§ 117. Actions.

Corporations may sue and be sued, plead and be impleaded in their corporate name. (Ch. 51, § 49.) Bringing a suit against a corporation admits its capacity to sue and be sued. *Freeman v. Machias Co.*, 38 Maine 343. Pleading the general issue admits the legal existence of the corporation. *Swift River Improvement Co. v. Brown*, 77 Maine 40. The existence of a corporation, if a party plaintiff, can only be questioned by a plea in abatement. *Penobscot Boom v. Lamson*, 16 Maine 224.

§ 118. Where Brought.

Local and transitory actions must be commenced and tried as follows: When the corporation is one party and a county the other, in an adjoining county. When the corporation is one party and a town or school district is the other, in the county in which either is situated. Otherwise corporations may sue and be sued in the county in which they have an established place of business, or in which the plaintiff or defendant, if a natural person, lives. (Ch. 86, § 13.)

The residence of a corporation shall be deemed to be in the county in which it has its established or usual place of business; held its last annual meeting, or usually holds its meeting. (Ch. 91, § 5.)

§ 119. Service of Process.

Service upon a corporation is made upon its president, clerk, cashier, treasurer, general agent or director, or if no

such person is found in the county where the corporation is established, with any member thereof. (Ch. 86, § 19.) Service on a foreign corporation having a place of business within the state may be made upon any such officer as above, or by leaving an attested copy at the office or place of business of the corporation. In all such cases service should be made thirty days before the return day thereof. (Ch. 86, § 19.)

Service of trustee process upon a corporation as trustee should be by summons, not by copy, served thirty days before the return day thereof. (Ch. 91, § 8.) If the corporation has appeared and filed a disclosure as trustee it is too late to make any objections on the ground of improper service. *Harris v. Somerset R. R.*, 47 Maine 298. A corporation summoned as trustee may disclose by attorney, who need not be a member of the corporation, and his disclosure shall be deemed true until disproved. *Head v. Merrill*, 34 Maine 586.

§ 120. Attachments.

The property of any corporation and the franchise of a corporation having the right to receive toll are liable to attachment on mesne process and to levy on execution for debts of the corporation. (Ch. 51, § 75; Ch. 83, §§ 24, 29.) In such cases the attaching officer should leave an attested copy of the writ with some officer of the corporation. (See section 119, preceding.)

§ 121. Executions.

The property of corporations, whether attached on mesne process or not, if not exempt from attachment, may be levied upon and sold in the same manner as property of individuals, and when so sold the corporation has a right to redeem within one year. (Ch. 81, § 41.)

CHAPTER XXI.

FOREIGN CORPORATIONS

§ 122. Requirements for Admission.

The policy of this state with regard to foreign corporations has been changed by requiring every foreign corporation which has a usual place of business in this state or is engaged in business in this state, to appoint some resident of the state its attorney, upon whom all lawful processes might be served, and to file with the Secretary of State a certified copy of its charter and a certificate setting out its name, the location of its principal office, the names and addresses of its directors and officers, the date of its annual meeting for election of officers, the amount of its capital stock authorized and issued, the number and par value of its shares and the amount paid in. (Ch. 51, §§ 107, 108.)

§ 123. Fees.

A fee of \$10 is payable to the Secretary of State upon the filing of such certificate, and if the capital stock of the company is afterward increased, a certificate of that fact must be filed within thirty days accompanied by a fee of \$10. (Ch. 51, §§ 108, 110; Ch. 118, § 13.) Thereafter an annual license fee of \$10 is payable to the State Treasurer. This should be accompanied by a certificate that no changes have occurred in the previous certificate filed, and if they have, setting out what changes have occurred. (Ch. 51, § 111.)

The state cannot place restrictions upon the rights of foreign corporations to carry on interstate commerce. And the fact that such corporation has no license to do business in Maine, or even that it is also engaged in interstate com-

merce, will not preclude it maintaining an action to enforce rights growing out of and connected with interstate commerce. *Rcyster Guano Co. v. Cole*, not yet reported. Decision handed down Nov. 16, 1916.

§ 124. Penalties.

The failure to observe these provisions is, first, a fine of not more than \$500 for each officer of the corporation whose duty it was to comply with the statute, second, the joint and several liability of the officers of such corporation for all debts and contracts of the corporation entered into while they are officers thereof, and, third, a denial of the right of the corporation to maintain any action in the courts of this state while at the same time the validity of their contracts would be sustained in actions against them. (Ch. 51, §§ 108, 111 and 114.)

§ 125. General Provisions.

It is usual under this statute to appoint the Secretary of State as the agent upon whom service of actions can be made, but any resident of the state may be so appointed.

Foreign corporations are not required to maintain any principal office in this state or any resident director or officer or keep any books here.

Aside from this license fee, they are taxed only upon such real or personal property as they may own in this state on the first day of April of each year in the same manner as local corporations are.

If such foreign corporations have property in this state, it may be attached and taken on execution in the same manner as property of non-resident individuals. (Ch. 51, § 107.) They may be summoned as trustees and trustee writs may be served upon them. *Cousens v. Lovejoy*, 81 Me. 467. Service of all actions must be made thirty days before the return day thereof. (Ch. 86, § 19.) If any corporation does business continuously in the state and has constantly an officer

or agent resident therein on whom service of process may be made, such corporation will be entitled to the benefit of all provisions of law relating to the limitations of actions, the same as domestic corporations. (Ch. 86, § 85 etc.)

Foreign corporations are persons within the first section of the fourteenth constitutional amendment and are guaranteed all rights of persons. See *Beef Company v. Best*, 91 Me. 431.

Our Maine courts have not yet construed the meaning of the words "engaged in business in this state permanently or temporarily" and a discussion of the meaning of this language as construed in other states would be too lengthy for this work. The interested reader should examine the text-books on corporation law and especially "Beale on Foreign Corporations."

PART II.—FORMS AND PRECEDENTS.

CHAPTER XXII.

ORGANIZATION. FORMS.

Form 1. Articles of Association.

.....

Articles of Association

of

AMERICAN MANUFACTURING COMPANY.

We, the undersigned, hereby associate ourselves together for the formation of a proposed corporation, under the laws of Maine, to be called American Manufacturing Company.

The purposes of said corporation are:

To own and lease timber lands in the State of Maine; to buy and sell lands and stumpage, and to cut and manufacture timber into lumber and other forms of merchandise; to own and to operate saw-mills and other equipment necessary for conducting a general lumber business; and to do any and all things necessary or properly pertaining to the conduct of said business.

And we do hereby waive all the requirements of the statutes of Maine as to the notice of first meeting for organization and hereby fix the second day of July, 1916, at ten o'clock in the forenoon, and the office of Smith & Jones in Augusta, Maine, as the time and place of such first meeting and, further, we hereby consent to the transaction of such business as may come before said meeting or any legal adjournment thereof.

Dated July 2, A. D. 1916.

William Gay.
James Brown.
George L. Jones.

This is the usual form for the articles of association or agreement. It contains a waiver of notice, and thus avoids the trouble and delay caused by the giving of notice required by Chapter 51, section 8. When this form is used associates can sign the agreement and hold their meeting for organization the same day. The statute requires that it be signed by at least three. The articles are not required to contain anything except the name of the company and its purposes.

When it is not desired to organize with a waiver of notice of the meeting, but to follow strictly the statutory requirement of notice, the same form may be used omitting reference to waiver of notice and the consent to transaction of business contained in the last part thereof. It then becomes necessary for one or more of the signers of such articles to give notice of the first meeting, which must, to allow of due notice, be fixed at least fourteen days later than the date of the articles. Notice of this meeting may be given as follows:

Form 2. Notice of First Meeting.

.....
 I, William Gay, one of the above signers, hereby give notice that the first meeting of the signers will be held at the time and place specified in the above articles of association and for the purposes enumerated therein, which agreement is hereby made a part of this notice.

Dated, at Augusta this second day of July, A. D. 1916.
 William Gay.

.....
 This notice should be given to each signer of the articles of agreement or be published in some newspaper printed in the county where the organization is to be made, fourteen days prior to the time appointed therein.

Form 3. Proof of Notice by Publication.

.....
 Augusta, Maine, July 16, 1916.
 I hereby certify that I gave due notice of the foregoing meeting, by causing the printed notice hereto attached marked "A" to be published

in the Kennebec Journal, a newspaper published at said Augusta, on the second day of July, which said printed notice I cut from said newspaper of said date.

William Gay.

State of Maine.

Kennebec, ss.

July 16, 1916.

Subscribed and sworn to,

Before me,

George M. Keith,

Justice of the Peace.

.....

Form 4. Proof of Notice by Personal Service.

.....

I, the within named William Gay, hereby certify that on July 2, 1916, at two o'clock P. M. I gave in hand to the within named James Brown, George L. Jones, and William Gay, each a written notice of which the within is a true copy.

William Gay.

.....

Form 5. Acknowledgment of Notice.

.....

I hereby acknowledge that I duly received a notice of which the above is a true copy on this second day of July, A. D. 1916.

William Gay,

James Brown.

George L. Jones.

.....

As the statute expressly provides that if all the signers of the articles of agreement waive notice and fix a time and place of the meeting no publication of notice is necessary, it will readily be seen that form "1" is much more convenient.

When the corporation is chartered by a special act of the legislature, unless the act contains provision for notice of first meeting, notice may be given by any person named in the act of incorporation, as follows:

Form 6. Notice Under Special Charter.

.....

To the Corporators of the Kennebec County Gas and Electric Company:

You are hereby notified that the first meeting of this company will be held at the Augusta House in Augusta, Maine, on Wednesday, July 11, A. D. 1916, at two o'clock P. M., for the purpose of accepting the charter of said corporation and organizing thereunder.

Morris Adams.

.....

Form 7. Return of Notice.

.....

I, Morris Adams, one of the corporators named in the act of incorporation of the Kennebec County Gas and Electric Company hereby certify that I served the foregoing notice upon each corporator named in the act of incorporation of said company by giving a copy thereof in hand to each of said corporators at least seven days before the time of meeting named therein.

Morris Adams.

.....

Form 8. Power of Attorney—First Meeting.

.....

AMERICAN MANUFACTURING COMPANY.

—————

Power of Attorney—First Meeting and Adjournment.

—————

Know All Men by These Presents:

That I, the undersigned, a subscriber for one share of the capital stock of American Manufacturing Company, do hereby constitute and appoint Frank Healy my true and lawful attorney, in my name, place and stead to vote upon the stock subscribed for by me, as my attorney at the meeting of the Associates and Stockholders of the said Company, to be held at the office of Jones & Smith, in Augusta, Maine, on the second day of July, 1916, or on such other day as the meeting may be held by adjournment or otherwise, according to the number of votes I am now or may then be entitled to cast, hereby granting the said attorney full power and authority to act for me in my name at the said meeting, or meetings, in voting for Directors and officers of the said Company or otherwise, and in the transaction of any other business which may legally come before said meeting, as fully as I could do if personally present, including the execution of any statutory confirmation of such meetings, or in lieu of the foregoing authority to complete my afore-

said subscription as he deems for my best interests and to make use of the same in such manner as he deems advisable in the premises, and hereby expressly ratifying and confirming all that my said attorney may do in my name, place and stead.

In Witness Whereof, I have hereunto set my hand and seal
this second day of July, 1916.

William Gay. (L. S.)

.....

This form may be used by any signer of the articles of association unable to be present in person at the first meeting.

At least three persons should be present at such meeting, and at least a majority of the persons who signed the articles of agreement, but any number less than a majority may be represented at such meeting under the foregoing power of attorney.

Form 9. Minutes of First Meeting.

.....

Minutes of First Meeting

of

AMERICAN MANUFACTURING COMPANY.

Copy of Articles of Association.

We, the undersigned, hereby associate ourselves together for the formation of a proposed corporation under the laws of Maine to be called
American Manufacturing Company.

The purposes of said corporation are:

To own and lease timber lands in the State of Maine; to buy and sell lands and stumpage, and to cut and manufacture timber into lumber and other forms of merchandise; and to own and to operate saw-mills and other equipment necessary for conducting a general lumber business; and to do any and all things necessarily or properly pertaining to the conduct of said business.

And we do hereby waive all requirements of the statutes of Maine as to the notice of first meeting for organization and hereby fix the second day of July, 1916, at ten o'clock in the forenoon, and the office of Smith & Jones in Augusta, Maine, as the time and place of such

first meeting, and, further, we hereby consent to the transaction of such business as may come before said meeting or any legal adjournment thereof.

Dated, July 2, A. D. 1916.

William Gay.
James Brown.
George L. Jones.

Under the authority of the foregoing articles of association and waiver of notice, the associates met at the office of Smith & Jones in Augusta, Maine, on the second day of July, 1916, at ten o'clock in the forenoon, for the purpose of organization.

There were present in person or by power of attorney on file:

William Gay,
George L. Jones,
James Brown,

being all of the signers of the articles of association aforesaid. William Gay called the meeting to order and on motion therefor William Gay was made Temporary Chairman and presided.

On motion therefor James Brown was made Temporary Clerk and duly sworn according to the following original record of his oath:

State of Maine.
Kennebec, ss.

July 2, A. D. 1916.

Personally appeared James Brown and made oath that he would faithfully and impartially perform the duties devolving upon him as Temporary Clerk of American Manufacturing Company.

Before me,

George M. Keith,
Justice of the Peace.

On motion therefor the following votes were unanimously adopted:
Voted, That the original articles of association be filed with the Clerk and a copy thereof spread upon these records.

Voted, That we proceed to organize as a corporation under the laws of Maine.

Voted, That the corporate purposes as stated in the Articles of Association be the corporate purposes of the company.

The Chairman presented a form of by-laws for the regulation and government of the affairs of the company, which were read article by article, unanimously adopted, and ordered to be inserted at length in the record, as follows:

(For appropriate forms of by-laws see Forms 24 and 25.)

After the adoption of the foregoing by-laws, on motion therefor it was unanimously

Voted, That the capital stock of the company be now open for subscription.

Thereupon the Chairman reported that subscriptions to the capital stock of the company had been received from the following persons:

Name.	Residence.	Shares.
William Gay	Augusta, Maine	One
George L. Jones	Augusta, Maine	One
James Brown	Augusta, Maine	One

The original subscriptions were ordered to be placed on file. Each of said subscriptions was in form as follows:

"I, the undersigned, hereby agree to take the number of shares set against my name in the capital stock of American Manufacturing Company, and I agree to pay for any part or all of the same to the Treasurer of the Company on demand and at such time and in such amounts as the Company, by its Board of Directors, may direct."

All of said stockholders thereupon appeared and participated in the meeting in person or by power of attorney on file with the Clerk.

On motion therefor it was unanimously

Voted, That the stockholders proceed to the election of a Clerk and a Board of Directors to serve until the next annual meeting.

Ballot having been had, the Chairman reported that the following persons had been unanimously elected to their respective offices:

Clerk, James Brown.

Directors, William Gay, James Brown, George L. Jones.

The Clerk was duly sworn as follows according to the following original record of his oath:

State of Maine.

Kennebec, ss.

July 2, A. D. 1916.

Personally appeared James Brown and made oath that he would faithfully and impartially perform the duties required of him as Clerk of American Manufacturing Company.

Before me,

George M. Keith,
Justice of the Peace.

On motion therefor it was unanimously

Voted, That the Directors meet forthwith and complete the organization of the company by the election of a President, Secretary and Treasurer, and that the President, the Treasurer and a majority of the Directors forthwith prepare the certificate of organization required by the laws of Maine and cause the same to be recorded and filed in the various offices required by law.

The Chairman reported that no further corporate business could be transacted until the foregoing certificate of organization had been approved by the Attorney General, recorded in the Registry of Deeds for Kennebec County, and a copy thereof attested by said Register filed with the Secretary of State, and the meeting thereupon adjourned to July 3, 1916, at eleven o'clock A. M.

A true record:

Attest:

James Brown,
Clerk.

.....

It will be noticed that the by-laws are omitted in this form. They will be found later. (See Forms 24 and 25 following.)

As these by-laws contain the name of the corporation and the amount of its capital stock, no formal votes in relation thereto are inserted in the record. If, as sometimes happens, no by-laws are adopted at the first meeting, then

before the vote adopting by-laws there should appear the following:

“Voted, That the name of the said corporation be American Manufacturing Company.

Voted, That the amount of capital stock be One Million Dollars divided into ten thousand shares of the par value of One Hundred Dollars each.

Voted, That the said corporation shall have its location and principal office at Augusta, Maine.”

It will be noticed that the minutes of the first meeting begin with a copy of the articles of association and waiver of notice. If notice was not waived the minutes should begin with a copy of the articles of association and the notice and proof of service.

The minutes of a first meeting of a corporation chartered by the legislature usually begin with a copy of the charter, followed by a copy of the notice of meeting and proof thereof. The minutes will then continue as follows:

Form 10. Minutes of Meeting of Corporation Chartered by Legislature.

.....
 “Pursuant to the foregoing notice, the corporators named in the charter of the Kennebec County Gas and Electric Company met in person, or by power of attorney at the time and place named in the foregoing notice for the purpose of organization.

There were present in person or by power of attorney, Morris Adams, George L. Thompson, Eugene Goodrich, Henry B. Cole, and James Dutch, being all of the corporators named in the act of incorporation of said Company.

George L. Thompson called the meeting to order, and on motion therefor George L. Thompson was made Temporary Chairman and presided.

On motion therefor Morris Adams was made Temporary Clerk and duly sworn according to the following original record of his oath: State of Maine.

Kennebec, ss.

July 11, 1916.

Then personally appeared Morris Adams and made oath that he would faithfully and impartially perform the duties devolving upon him as Temporary Clerk of the Kennebec County Gas and Electric Company.

Before me,

John Smith,
Justice of the Peace.

On motion therefor the following votes were unanimously adopted:
Voted, To accept chapter 79 of the Public Laws of 1915 entitled an
"Act to Incorporate Kennebec County Gas and Electric Company."

A vote should then be passed adopting by-laws, and the remainder of the record may be the same as in Form 9 preceding.

Form 11. Assent to Meeting.

We, the undersigned, being all the members of Kennebec County Gas and Electric Company, certify that we were present in person or by proxy, at the foregoing meeting, and we consent thereto.

Morris Adams.
George L. Thompson.
Eugene Goodrich.
Henry B. Cole.
James Dutch.

When this form of assent is signed as a part of the record of first meeting, such meeting is legal. (Ch. 51, § 17.) It is always prudent to incorporate such an assent in the record.

Form 12. Subscription to Stock.

Stock Subscription of

KENNEBEC COUNTY GAS & ELECTRIC COMPANY.

Capital \$1,000,000. Par Value of Shares \$100.

I, the undersigned, hereby agree to take the number of shares set against my name in the capital stock of Kennebec County Gas and Electric Company, and I agree to pay for any part or all of the same to the Treasurer of the Company on demand and at such time and in such amounts as the Company, by its Board of Directors, may direct.

Dated July 11, 1916.

Name.	Residence.	No. Shares.	Par Value
George L. Thompson.....	Augusta, Maine.....	One	\$100.

As previously stated, if this subscription is signed before the company is organized it is revocable. Only three shares need be subscribed for at the organization of the company, and nothing need be paid in. When it is desired to make the subscription binding from the time made, this form is changed so as to become an agreement with some person as trustee or by stating therein that the subscribers agree each with the other; in such cases the list is signed by all the subscribers.

Form 13. Subscription to Stock. Mutual.

.....

Stock Subscription
of

AMERICAN MANUFACTURING COMPANY.

Capital Stock One Million Dollars; Par Value of Shares One Hundred Dollars.

We, the undersigned, parties hereto, hereby mutually agree, each with the others, that we will take the number of shares in the American Manufacturing Company, a corporation proposed to be organized under the general corporation laws of the State of Maine, herein set opposite our respective names, and we hereby, each severally and for himself, agree to pay for the same to the Treasurer of the Company on demand and at such time and in such amounts as the Company, by its Board of Directors, may direct.

Dated, July 2, A. D. 1916.

Name.	Residence.	No. of Shares.	Par Value
William Gay	Augusta, Maine.	One Common	\$100
James Brown	Augusta, Maine.	One Common	\$100
George L. Jones	Augusta, Maine.	One Common	\$100

Form 14. Waiver of Notice. First Meeting of Directors.

.....

Waiver of Notice
of the

First Meeting of the Board of Directors
of

AMERICAN MANUFACTURING COMPANY.

We, the undersigned, being the Board of Directors elected by the stockholders of the American Manufacturing Company, organized

under the laws of the State of Maine, do hereby waive notice of the time and place of the first meeting of the said Board of Directors, and of the business to be transacted at said meeting.

We designate the second day of July, 1916, at eleven o'clock in the forenoon as the time, and the office of Smith & Jones, Augusta, Maine, as the place of the first meeting of said Board of Directors. The purpose of said meeting being the election of officers and the transaction of such other business as may be legally necessary to complete the organization of said Company.

Dated July 2, 1916.

William Gay.
James Brown.
George L. Jones.

.....

The directors should meet as soon as possible after the first meeting of the associates and prepare a certificate of organization of the company.

Form 15. Minutes of Directors' First Meeting.

.....

Directors' First Meeting.

Minutes of the proceedings of the first meeting of the Directors of American Manufacturing Company, held at the office of Smith & Jones, in Augusta, Maine, on the second day of July, 1916, at eleven o'clock in the forenoon.

There were present

William Gay,
James Brown,
George L. Jones,

being all of the Directors of the Company.

The meeting was called to order by the Clerk of the Corporation, and upon motion therefor was it unanimously resolved that William Gay act as Chairman of this meeting and that the Clerk serve as temporary Secretary.

A waiver of notice of the meeting signed by all of the Directors was presented and ordered to be placed on file.

The minutes of the first meeting of the stockholders were read.

Upon motion it was

Resolved, That the Board proceed to the election of a President, Secretary of the Board and Treasurer.

Nominations having been made and ballots cast, the Chairman announced the unanimous election of the following officers:

President, William Gay.
Secretary of Board, James Brown.
Treasurer, George L. Jones.

The above named persons were thereupon declared by the Chairman to be elected to their respective offices.

The President in the Chair—The Secretary assumed the duties of his office.

Upon motion it was

Resolved, That the certificate of organization required by the laws of Maine be forthwith made, recorded and filed.

Adjourned to July 3, 1916, at ten o'clock A. M.

A true record:

Attest:

James Brown,
Secretary.

.....

The president, treasurer and a majority of the directors should then prepare a certificate of organization of the company, have it approved by the Attorney General, recorded in the office of the Register of Deeds where the corporation is to be located, and see that a copy certified by said Register is filed in the office of the Secretary of State.

Form 16. Certificate of Organization. Simple.

.....

STATE OF MAINE.

Certificate of Organization of a Corporation Under the General Law.

The undersigned, officers of a corporation organized at Augusta, Maine, at a meeting of the signers of the articles of agreement therefor, duly called and held at office of Smith & Jones in the city of Augusta on Monday, the second day of July, A. D. 1916, hereby certify as follows:

The name of said corporation is American Manufacturing Company.

The purposes of said corporation are: To own and lease timber lands in the State of Maine; to buy and sell lands and stumpage, and to cut and manufacture timber into lumber and other forms of merchandise; to own and to operate sawmills and other equipment necessary for conducting a general lumber business, and to do any and all things necessarily or properly pertaining to the conduct of said business.

The amount of capital stock is One Million Dollars (\$1,000,000.)

The amount of common stock is Five Hundred Thousand Dollars (\$500,000.)

The amount of preferred stock is Five Hundred Thousand Dollars \$500,000.)

The amount of capital stock already paid in is Nothing.
 The par value of the shares is One Hundred Dollars (\$100.)
 The names and residences of the owners of said shares are as follows:

Names.	Residences.	No. of Shares.	
		Common.	Preferred.
William Gay	Augusta, Maine	1	
James Brown	Augusta, Maine	1	
George L. Jones	Augusta, Maine	1	
Number of shares in Treasury unsubscribed		4,997	5,000
		5,000	5,000

Said corporation is located at Augusta in the County of Kennebec.
 The number of directors is three and their names are William Gay, James Brown, and George L. Jones.
 The name of the Clerk is James Brown and his residence is Augusta, Maine.

The undersigned, William Gay is President; the undersigned, George L. Jones is Treasurer; and the undersigned, William Gay and James Brown are a majority of the Directors of said corporation.

Witness our hands this second day of July, A. D. 1916.

William Gay, President.
 George L. Jones, Treasurer.
 William Gay,
 James Brown, Directors.

State of Maine.
 Kennebec, ss.

July 2, A. D. 1916.

Then personally appeared William Gay, James Brown and George L. Jones, and severally made oath to the foregoing certificate, that the same is true.

Before me,

Henry Smith,
 Justice of the Peace.

STATE OF MAINE.

Attorney General's Office, July 2d, A. D. 1916.

I hereby certify that I have examined the foregoing certificate, and the same is properly drawn and signed, and is conformable to the Constitution and laws of the State.

A. T. Snyder,
 Asst. Attorney General.

Form 17. Indorsements on Back of Certificate.

.....

Certificate of Organization of

American Manufacturing Co.

Kennebec, ss.

Registry of Deeds.
1916,

Received *July 3,*
at 11 h. m. A. M.
Recorded in Vol. 23 Page 231
Attest:

Benj. Hall, Register.

STATE OF MAINE.

Office of Secretary of State,

Augusta, Maine, *July 3,* 1916.

A copy of the record of the within certificate of organization, duly certified by the Register of Deeds of *Kennebec* County, has this day been received and filed in this office.

Recorded in Vol. 123 Page 234 of Records of Corporations.

Attest

John Williams, Secretary of State.

Form 18. Certificate of Organization by Special Charter

.....

STATE OF MAINE.

Certificate of Organization of a Corporation Chartered by
Special Statute.

The undersigned, officers of a corporation organized at Augusta, Maine, at a meeting of the corporators, duly called and held at office of Smith & Jones in the City of Augusta, Maine, on Wednesday, the eleventh day of July, A. D. 1916, hereby certify as follows:

The date of approval of its charter is January 15, A. D. 1915.

The name of said corporation is Kennebec County Gas and Electric Company.

The purposes of said corporation are (Here insert the statement of corporate purposes found in the charter granted by the Legislature.)
 The amount of capital stock is One Million Dollars (\$1,000,000.)
 The amount of capital stock already paid in is Nothing.
 The par value of the shares is One Hundred Dollars (\$100.)
 The names and residences of the owners of said shares are as follows:

Name.	Residence.	No. of Shares.
George L. Thompson	Augusta, Maine.....	1
Morris Adams	Augusta, Maine.....	1
Eugene Goodrich	Augusta, Maine.....	1

Said corporation is located at Augusta in the County of Kennebec.
 The number of directors is three and their names are George L. Thompson, Morris Adams and Eugene Goodrich.
 The name of the Clerk is George L. Thompson and his residence is Augusta, Maine.
 The undersigned, Morris Adams is president; the undersigned, Eugene Goodrich is treasurer; and the undersigned, George L. Thompson, Morris Adams and Eugene Goodrich are a majority of the directors of said corporation.

Witness our hands this eleventh day of July, A. D. 1916.
 Morris Adams, *President*.
 Eugene Goodrich, *Treasurer*.
 George L. Thompson,
 Morris Adams,
 Eugene Goodrich. } *Directors.*

State of Maine.
 Kennebec, ss.

July 11, A. D. 1916.

Then personally appeared George L. Thompson, Morris Adams and Eugene Goodrich and severally made oath to the foregoing certificate, that the same is true.
 Before me,

S. C. Williams,
Justice of the Peace.

Form 19. Indorsements on Back of Certificate.

CHARTERED BY SPECIAL STATUTE.

(Name of Corporation.)

Kennebec County Gas and Electric Company.

Kennebec, ss.
 Registry of Deeds.
 1916,

Received *July 11,*
 at *three* h. m. *P. M.*
 Recorded in Vol. 34 Page 345
 Attest:

Benj. Hall, Register.

STATE OF MAINE.

Office of Secretary of State.

Augusta, July 11, 1916.

A copy of the record of the within certificate of organization, duly certified by the Register of Deeds of *Kennebec* County, has this day been received and filed in this office.

Recorded in Vol. 134 Page 346 of Records of Corporations chartered by Special Statute.

Attest:

John Williams, Secretary of State.

Form 20. Broad Statement of Purposes.

"To undertake, do, engage in, transact and carry on any and all kinds of manufacturing, mechanical, mercantile, trading, contracting, commercial, building, agricultural, logging, lumbering, mining, quarrying, and real estate business; and any and all other kinds of business incidental, ancillary, related, pertaining, necessary or proper to or connected with any one or all of the purposes and kinds of business in this clause mentioned."

The statement of purposes in the certificate of organization of Form 16 is a simple form. The above statement is sometimes preferred where the purposes of the company are broad. It should be remembered that it is never necessary in the statement of purposes of a Maine corporation to insert any of the powers of the corporation.

As previously stated in the text, corporations frequently include in the statement of purposes, powers of the corporation, such as clauses authorizing the doing of business out of the state, the right to hold stock in other corporations, the right to purchase property and carry on the business of similar corporations, etc. In Maine their insertion is unnecessary and without legal effect. If the corporation is organized for the purpose of doing business outside the state as a railroad, gas, telegraph, telephone or electrical company.

or if any of these purposes are included among others in the statement of purposes of the corporation, then it is necessary under the statute to include in the statement of purposes some such statement as the following:

Form 21. Clause Negating Certain Purposes Within the State.

.....

"But the above purposes so far as they relate to the construction and operation of railroads or aiding in the construction thereof, telegraph or telephone companies or gas or electric light, heat or power companies shall be exercised, and said business shall be carried on, only in other states and jurisdictions and when and where permissible under the laws thereof."

.....

Form 22. Clause Negating Certain Kinds of Business Anywhere.

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"But this corporation shall not do any kind of a banking or insurance business, or that of a corporation intended to derive profit from the loan or use of money."

This clause should be added whenever the statement of purposes might otherwise be deemed broad enough to include the purposes above negated. In place thereof the following broader form of language is sometimes used.

.....

Form 23. General Negative Clause.

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"Provided, however, that nothing herein contained shall be construed as authorizing the corporation to transact business in any state, territory or foreign country contrary to the provisions of the laws of such state, territory or foreign country and that nothing in these purposes shall be construed to give the corporation any rights, powers or privileges not permitted by the laws of Maine to corporations organized under Section 7, Chapter 51 of the Revised Statutes, and the following corporate purposes shall be exercised only in states and jurisdictions other than Maine, namely: The construction and operation of rail-

roads, and aiding in the same, telegraph and telephone companies and gas and electric companies, and such business shall be carried on only in other states and jurisdictions and when and where permissible under the laws thereof."

The Revised Statutes (Ch. 60, § 7) provide that the certificate of organization of telegraph and telephone companies organized under that chapter shall specify, "the general route of telegraph or telephone lines proposed to be constructed by said corporation, and the points to be connected thereby," and that the certificate of organization of either gas or electric companies shall specify, "the city or town, or the adjoining cities or towns, within which said corporation proposes to make, generate, sell, distribute or supply gas or electricity, or both." This applies, however, only to corporations organized to do business in Maine.

CHAPTER XXIII.

BY-LAWS.

Form 24. By-Laws. Short Form.

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FARRAND MANUFACTURING COMPANY.

By-Laws.

Sec. 1. The name of this corporation is Farrand Manufacturing Company, and its principal office is at Augusta, Maine.

Sec. 2. The capital stock shall be \$50,000 divided into 500 shares of the par value of \$100 each to be known as common stock.

Sec. 3. The officers shall be a President, Vice-President, Treasurer, Secretary, Clerk and a Board of three Directors.

Sec. 4. The President shall have the general control and management of the Company subject to any specific power delegated by the Board of Directors and shall preside at all meetings of the Board of Directors of which he shall be Chairman and at all meetings of the stockholders.

Sec. 5. The Vice-President shall perform the duties of the President in his absence.

Sec. 6. The Treasurer shall keep accurate records of all moneys received and paid out and shall have the custody of all property. All funds shall be paid out as directed by the Board of Directors and the Treasurer shall make a report, when required, of the financial condition of the Company. He shall give such bond as the Board of Directors may require for the faithful discharge of his duties.

Sec. 7. The Secretary shall be the Clerk of the Board of Directors and shall keep a faithful record of all meetings of the Board and send proper notices of meetings of the Board and generally perform such duties as may be required by the President and the Board of Directors.

Sec. 8. The Clerk shall be elected by the stockholders. He shall be a resident of the State of Maine, shall send proper notices of all stockholders' meetings and keep the records thereof and faithfully perform all duties required by Statute.

Sec. 9. The Board of Directors shall be three in number. They shall be elected annually by the stockholders and shall hold office until their successors are chosen and qualified. They shall elect by ballot all officers of the Company except the Clerk and Board of Directors. They shall hold meetings on the first secular day of each month at 10 a. m. and at other times when called by the President or a majority of their own number upon two days' written notice. A majority of their number shall constitute a quorum to transact business. They shall have the general management of the business of the corporation.

Sec. 10. The stockholders shall hold a meeting annually on the third Tuesday of August, at 10 a. m. in Augusta, Maine, and shall then elect by ballot a Clerk and a Board of Directors. A majority of the shares of stock issued and outstanding shall constitute a quorum and voting may be in person or by written proxy at any meeting, but no proxy shall be valid if granted more than thirty days prior to the date of the meeting in which it is used. Notices of the annual meeting shall be sent by the Clerk to each stockholder at least five days before such annual meeting.

Sec. 11. All officers shall hold office until their successors are duly elected and qualified.

Sec. 12. The seal of the corporation shall be a circular disc upon which shall be inscribed the words "Farrand Manufacturing Company, Seal 1916, Augusta, Maine."

Sec. 13. Vacancies in any office may be filled at any time by the Board of Directors.

Sec. 14. All checks for the payment of money must be signed or countersigned by the President.

Sec. 15. These by-laws may be amended at any regular or special meeting of the stockholders by vote of a majority of the stock outstanding.

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Many of the sections of the following by-laws are but repetition of appropriate statutes. It is prudent to embody such provisions in the records accessible to stockholders not "learned in the law." Such sections in the form following are marked "(Statutory.)" The sections marked "(Optional)" are to be changed or omitted as the necessities of each case may require.

The following form of by-laws was prepared some years ago by the author for the use more especially of corporations doing business outside the state, but having their principal office in Maine. It has met with the approval of experienced counsel throughout the United States, as a form well adapted to such conditions. For a corporation having few stockholders and transacting its business within the state the shorter form is recommended.

Form 25. By-Laws. Extended Form.

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By-Laws
of
AMERICAN MANUFACTURING COMPANY.

Article I.*Name. Location. Corporate Seal.*

Sec. 1. The name of the corporation is American Manufacturing Company. (Statutory.)

Sec. 2. The location and principal office shall be at the office of Smith & Jones in Augusta, Maine. The Company may also have an office in the city of Chicago, State of Illinois, and also offices at such other places as the Board of Directors may appoint or the business of the Company may require. (Statutory.)

Sec. 3. The corporate seal of the Company shall have inscribed thereon the name of the corporation, the year of its creation and the words "Corporate Seal, Maine." (Statutory.)

Article II.—Capital Stock.

The capital stock of the Company shall be one million dollars, divided into five thousand shares of the par value of one hundred dollars, to be known as common stock, and five thousand shares to be known as preferred stock. (Memo.—For appropriate provisions relative to preferred stock see Forms 26, 27, 28.) (Statutory.)

Article III.—Stockholders' Meetings.

Sec. 1. All meetings of stockholders shall be held within the State of Maine at the principal office of the Company in Augusta, Maine. (Statutory.)

Sec. 2. A majority in amount of the stock issued and outstanding, legally represented, shall constitute a quorum for the transaction of business, excepting, that in the absence of a quorum, a lesser number shall have the right to adjourn a meeting to a fixed date thereafter or otherwise. (Optional.)

Sec. 3. At all meetings stockholders may vote in person, by proxy in writing or by general power of attorney produced at the meeting. Such powers of attorney shall be good until revoked. No proxy shall be voted upon when granted more than thirty days before the meeting which shall be named therein and shall not be valid after a final adjournment thereof. (Statutory.)

Sec. 4. Every person holding stock in any representative or fiduciary capacity may represent the same at all meetings of the corporation and may vote thereon as a stockholder; and every person, who shall transfer, mortgage or in any way pledge his stock to another for security merely, and if so appears in such transfer, mortgage or pledge and on the books of the corporation, shall have the right to vote upon such stock at all meetings of the corporation until his right of redemption ceases, and notice thereof is given to the corporation, but if such stockholder in the transfer to the pledgee on the books

of the corporation shall have expressly empowered the pledgee to vote thereon then only the pledgee, or his proxy or attorney, may represent said stock and vote thereon. (Statutory.)

Sec. 5. Shares of stock of this corporation belonging or hypothecated to said corporation shall not be voted upon directly or indirectly. Any corporation holding stock in this Company may vote thereon through any person regularly empowered so to do. (Statutory.)

Sec. 6. Every stockholder shall furnish the Treasurer with an address at which notice of meetings and all other notices may be served upon or mailed to him and in default thereof notice shall be addressed to him at the office of the Company in Augusta, Maine. (Optional.)

Sec. 7. The annual meeting of the stockholders, after the year 1916, shall be held on the fifteenth day of July in each year, or the next secular day thereafter, at the principal office of the Company in Augusta, Maine, or at such other place within the state as the Board of Directors may determine, at ten o'clock a. m., when they shall elect, by a majority vote, by ballot, a Board of Directors and Clerk and transact such other business as may legally come before the meeting. Each stockholder, in person, by proxy or by general power of attorney, shall be entitled to one vote for each share of stock standing in his or her name on the third day preceding such election, exclusive of the day of such election. The transfer books shall be closed for said three days. (Optional.)

Sec. 8. Notice of the annual meeting shall be mailed by the Secretary of the Board of Directors to each stockholder entitled to vote at said meeting at his address as provided by section six of this article at least three days prior to the meeting. A failure to give such notice shall not invalidate the proceedings of the meeting. (Optional.)

Sec. 9. Special meetings of the stockholders, to be held at the Company's principal office in Augusta, Maine, or elsewhere in the state may be held at any time on the order of the President, or on the request in writing or by vote of a majority of the Board of Directors, or on demand in writing by stockholders of record owning a majority in amount of the capital stock of the Company issued and outstanding. (Optional.)

Sec. 10. Notice of each special meeting shall be mailed by the Secretary of the Board of Directors to each stockholder entitled to vote at said meeting at his address as provided by section six of this article at least three days prior to the date of such meeting, stating therein briefly the object of the meeting and the business to be there transacted, and no other business shall be transacted at such meeting. (Optional.)

Sec. 11. If all the stockholders in writing waive notice of any meeting, no notice of such meeting shall be required. When all of the stockholders are present in person or by proxy at any meeting and sign a written consent thereto upon the record thereof, any corporate action taken at such meeting shall be legal and valid. (Statutory.)

Sec. 12. At all meetings of the stockholders the following order of business shall be substantially observed, as far as consistent with the purposes of the meeting, viz:

1. Proof of notice of the meeting.
2. Report as to quorum.
3. Reading minutes of preceding meeting.
4. Report of President.
5. Report of Treasurer.
6. Reports of Committees.
7. Election of Directors.

8. Election of Clerk.
9. Unfinished Business.
10. New Business.

The order of business may be changed by vote of the majority in interest present. (Optional.)

Sec. 13. A full and complete list of the stockholders of the Company entitled to vote at any annual or special meeting, with the number of shares held by each, shall be prepared by the Secretary of the Board of Directors and filed at least three days before such meeting with the Clerk at the principal office of the Company in Augusta, Maine, and shall at all times during the usual hours of business in said period be open to the examination of any stockholder. (Optional.)

Article IV.—*Directors.*

Sec. 1. The property and business of the corporation shall be managed by a Board of Directors three in number, who shall at all times be bona fide stockholders. They shall hold office for one year and until others are elected and qualified. The number of Directors may be increased or decreased, by an amendment of this section. (Statutory.)

Sec. 2. The Board of Directors shall have the control and management of the business of the Company, and in addition to the powers and authorities by these By-Laws expressly conferred upon them, may exercise all such powers and do all such acts and things, as may be exercised or done by the Corporation, but subject, nevertheless, to the provisions of the Statutes and of these By-Laws, and to any regulations from time to time made by the stockholders, provided that no regulations so made shall invalidate any prior act of the Directors which would have been valid if such regulations had not been made. (Optional.)

Sec. 3. Without prejudice to the general powers conferred by the last preceding section and the other powers conferred by these By-laws, it is hereby expressly declared that the Board of Directors shall have the following powers, that is to say:

1. To purchase or otherwise acquire for the Company any property, rights or privileges which the Company is authorized to acquire, at such prices and on such terms and conditions and for such consideration as they think fit.

2. At their discretion to pay for any property or rights acquired by the Company, either wholly or partially, in money or in stocks, bonds, debentures or other securities of the Company.

3. To appoint and at their discretion remove or suspend such managers, officers, subordinate, assistant or otherwise, and clerks, agents and servants, permanently or temporarily, as they may from time to time think fit and to determine their duties and fix, and from time to time change, their salaries or compensation, and to require security in such instances and in such amount as they think fit.

4. To confer by resolution, upon any officer of the Company, the right to choose, remove or suspend such subordinate officers, agents or factors.

5. To appoint any person, or persons, to accept and hold in trust for the Company any property belonging to the Company, or in which it is interested, or for any other purpose, and to execute and do all such duties and things as may be requisite in relation to any such trust.

6. To determine who shall be authorized to sign on the Company's behalf bills, notes, receipts, acceptances, endorsements, checks releases, contracts and documents.

7. From time to time to provide for the management of the affairs of the Company at home or abroad in such manner as they think fit, and in particular, from time to time, to delegate any of the powers of the Board of Directors to any committee, officer or agent and to appoint any persons to be the agents of the Company with such powers (including the power to sub-delegate) and upon such terms as may be thought fit. (Optional.)

Sec. 4. The Directors shall act only as a Board and the individual Directors shall have no power as such. (Common Law.)

Sec. 5. They shall present at each annual meeting, and when called for by the stockholders at any special meeting of the stockholders, a full and clear statement of the business and condition of the Company. (Optional.)

Article V.—*Meetings of Directors.*

Sec. 1. A majority of the Directors in office shall be necessary to constitute a quorum for the transaction of business except to adjourn from time to time until a quorum be present. (Optional.)

Sec. 2. Regular meetings of the Directors shall be held on the first day of each month at the office of the Company in Augusta, Maine, or by order of the Board of Directors elsewhere, at an hour to be fixed by the Board. (Optional.)

Sec. 3. Notice of all regular meetings shall be mailed to each Director at his last known post-office address by the Secretary of the Board at least three days prior to the time fixed for such meeting, but the failure to give such notice shall not invalidate such meeting. (Optional.)

Sec. 4. Special meetings of the Board may be called by the President on two days' notice to each Director by the Secretary of the Board; special meetings shall be called in like manner on the written request of two members of the Board. Such notice may be by telegram, telephone message, or in writing, delivered to each Director personally or left at his residence, or usual place of business. (Optional.)

Sec. 5. The Directors may hold their meetings and have an office and keep all the books of the Company (except the records of the meetings of the stockholders) outside of the State of Maine at the City of Chicago or such other place or places as they may fix upon. (Optional.)

Sec. 6. The order of business at the meetings of the Board shall be as follows:

1. Proof of notice (if a special meeting.)
2. Reading of minutes of last meeting.
3. Reports of officers.
4. Reports of Committees.
5. Unfinished business.
6. New business.

This order may be changed at any meeting by a majority vote of the Directors present. (Optional.)

Article VI.—*Standing Committees.*

Sec. 1. There may be an Executive Committee of two Directors appointed by the Board, who shall meet at regular periods, or on notice to all by any of their own number; they shall advise with and aid the officers of the Company in all matters concerning its interests and the management of its business, and generally perform such duties and

exercise such powers as may be directed or delegated by the Board of Directors from time to time, and they shall have authority to exercise all the powers of the Board when at any time a quorum fails to attend any regular or special meeting thereof. Power is hereby given to such Executive Committee to act by the written consent of a quorum thereof, although not formally convened. (Optional.)

Sec. 2. There may be a Finance Committee of two Directors appointed by the Board, who shall attend to and supervise all the fiscal operations of the Company, under the direction of the Board, and shall examine and audit all accounts of the Company at the close of each fiscal year and at such other times as they may deem necessary. (Optional.)

Sec. 3. The standing committees shall keep regular minutes of their transactions and cause them to be recorded in a book kept in the office of the Company designated for that purpose and report the same to the Board of Directors at their regular meetings. (Optional.)

Sec. 4. Vacancies in the standing committees shall be filled by the Board of Directors. (Optional.)

Article VII.—*Compensation of Directors.*

Directors, as such, shall not receive any stated salary for their services, but by resolution of the Board may be allowed a fixed sum per day and their actual traveling expenses, for attendance at each regular or special meeting of the Board, if present at roll call and until adjournment, unless excused. Members of either special or standing committees may be allowed like compensation for attending committee meetings. Additional compensation may be made to Directors for special services rendered. (Optional.)

Article VIII.—*Officers.*

Sec. 1. Immediately after the election of Directors, if all of the Board of Directors are present or if those absent have filed a waiver of notice, and if not, at their first meeting thereafter when there shall be a quorum, the said Board shall elect, by ballot, a President and a Vice-President from their own number, who shall hold office for one year and until their successors are elected and qualified. Said first meeting may be called by the Secretary of the Board of Directors then in office, or if none then by the Clerk of the Corporation, at such time and place and upon such notice as he may deem best. (Optional.)

Sec. 2. The Board of Directors shall annually choose a Secretary of their Board and a Treasurer, who need not be members of the Board, or one person to act as both Secretary and Treasurer, who shall hold office for one year, and until their successors are elected, unless sooner removed by the Board, which the Board shall have power at any time to do, with or without cause. (Optional.)

Sec. 3. If the office of any Director, or of the President, Vice-President, Secretary, Treasurer or Clerk, one or more, becomes vacant by reason of death, resignation, disqualification or otherwise, the remaining Directors, although less than a quorum, by a majority vote, may elect a successor, or successors, who shall hold office for the unexpired term. Any Clerk so elected must be a resident of the State of Maine. The Directors may by vote delegate to the stockholders authority to fill vacancies in any of the offices aforesaid except that of President. (Optional.)

Sec. 4. Any Director or other elected officer may resign his office

at any time, such resignation to be made in writing, and to take effect from the time of its receipt by the Company, unless some other time be fixed in the resignation and then from that date. The acceptance of a resignation shall not be required to make it valid. (Optional.)

Sec. 5. In case of the absence of any officer of the Company, or for any other reason that may seem sufficient to the Board, the Board of Directors may delegate his powers and duties to any other officer, or to any Director, for the time being. This by-law shall not apply to the Clerk. (Optional.)

Article IX.—President.

Sec. 1. The President shall be the chief executive officer and head of the Company, and (in the recess of the Board of Directors) shall have the general and active management of its business and affairs, subject, however, to the right of the Directors to delegate any specific power, except such as may be by the statute exclusively conferred upon the President, to any other officer or officers of the Company, to the exclusion for the time being of the President. (Optional.)

Sec. 2. The President shall preside at all meetings of the stockholders. He shall also preside at all meetings of the Board of Directors, and appoint all special or other meetings, unless otherwise ordered by the Board. He shall make annual reports showing the condition of the affairs of the Company, making such recommendations as he thinks proper, and submit the same to the Board of Directors at the meeting next preceding the annual meeting of stockholders, and he shall from time to time bring before the Directors such information as may be required, touching the business and property of the Company. He shall be ex-officio a member of all standing committees of the Board, and shall be the custodian of the corporate seal. (Optional.)

Article X.—Vice-President.

Sec. 1. The Vice-President shall be vested with all the powers, and required to perform all the duties of the President in his absence. (Optional.)

Sec. 2. In case of the absence of both the President and Vice-President a President pro tem may be elected. (Optional.)

Article XI.—Secretary.

The Secretary of the Board of Directors shall attend all sessions of the Board and act as the Clerk thereof, and shall record all votes and the minutes of all proceedings in a book kept for that purpose. He shall see that proper notice is given of all meetings of the Board of Directors and of the stockholders and shall perform such other duties as may be required by said Board or by the President. He shall be ex-officio Secretary of the Standing Committees, if any, and shall keep such records of their proceedings as they may require. (Optional.)

Article XII.—Treasurer.

Sec. 1. The Treasurer shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company, and shall deposit all moneys and other valuable effects in the name and to the credit of the Company in such depositories as may be designated by

the Board of Directors. He shall have the authority to endorse on behalf of the Company for the purpose only of transfer to the depository bank or trust company, to be deposited therein, all checks, notes, drafts, warrants and orders. (Optional.)

Sec. 2. He shall disburse the funds of the Company as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and Directors, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Company, and at the regular meeting of the Board next preceding the annual meeting of the stockholders a like report for the preceding year. (Optional.)

Sec. 3. The stock books, stock transfers and stock records shall be kept at the office of the Treasurer and in such form and manner and under such regulations as the Board of Directors may determine.

Sec. 4. The Treasurer shall give the Company a bond in a sum, and with one or more sureties satisfactory to the Board of Directors, for the faithful performance of the duties of his office, and the restoration to the Company, in case of his death, resignation or removal from office, of all books, papers, vouchers, money or other property of whatever kind in his possession belonging to the corporation. (Statutory.)

Article XIII.—Clerk.

Sec. 1. The Clerk, who shall at all times be a resident of Maine, shall be elected by the stockholders at the annual meeting. He shall keep at some fixed place within the State of Maine a clerk's office, where shall be kept the records of all meetings of the stockholders. Within twenty days after his election he shall file in the registry of deeds for the County of Kennebec in the State of Maine, a certificate giving the date of his election, his full name and residence and the location of said clerk's office. (Statutory.)

Sec. 2. The Clerk shall attend all meetings of the stockholders and act as the Clerk thereof and shall record all votes and the minutes of all proceedings in a book kept for that purpose. He shall be sworn to the faithful discharge of his duties and receive a reasonable compensation for his services. (Statutory.)

Sec. 3. In the absence of the Clerk, a Clerk pro tem may be chosen, who shall be a resident of Maine and be duly sworn. (Statutory.)

Article XIV.—Certificates of Stock.

Sec. 1. All certificates of stock shall be signed by the President or Vice-President and by the Treasurer and shall have affixed thereto the corporate seal. (Optional, but statutory in part.)

Sec. 2. Such certificates shall be numbered in the order in which they are issued. They shall be bound in a book and shall be issued in consecutive order therefrom; and in the margin of this book shall be entered the names of the persons owning the shares therein represented, the number of shares and the dates thereof. (Optional.)

Sec. 3. Shares of stock of the Company shall be transferable only on the books of the Company by the holder thereof in person, or by his or her attorney duly authorized thereto in writing, and upon the surrender and cancellation of the certificate therefor duly endorsed. Whenever any transfer shall be made for collateral security and not absolutely the fact shall be so expressed in the entry of said transfer. (Optional.)

Sec. 4. In case of the loss or destruction of a certificate, another may be issued in its place upon proof of such loss or destruction and the giving of a satisfactory bond of indemnity or other security. (Optional.)

Article XV.—Dividends.

Sec. 1. Dividends upon the capital stock of the Company, when earned, shall be payable as the Directors may order. Before payment of any dividends or making any distribution of profits, there may be set aside out of the net profits of the Company such sum or sums as the Directors from time to time in their absolute discretion think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Company, or for any such other purpose as the Directors shall think conducive to the interests of the company. (Optional.)

Sec. 2. The Board of Directors shall close the transfer books for ten days before the payment of any dividend. (Optional.)

Article XVI.—Contracts, Checks, Notes, Etc.

Sec. 1. No agreement, contract or obligation, other than a check involving the payment of money or the credit of the Company for more than five hundred dollars, shall be made without the order of the Board of Directors duly entered in the minutes. Unless the Board shall otherwise from time to time determine, all contracts shall be signed by the President. (Optional.)

Sec. 2. All checks, drafts or orders for the payment of money shall, until the Directors otherwise order, be signed by the Treasurer. No check shall be signed in blank. (Optional.)

Sec. 3. All notes and acceptances shall, unless the Directors otherwise order, be signed by the President, or Vice-President, and the Treasurer. (Optional.)

Article XVII.—Books and Accounts.

The books, accounts and records of the Company shall be open to inspection by any member of the Board of Directors at all times during the usual hours of business. The records of meetings of stockholders shall likewise be open to similar inspection by any stockholder, but all other books, accounts and records shall be so open to inspection by the stockholders only at such times as the Board of Directors may by resolution designate. (Optional.)

Article XVIII.—Notices and Waiver.

Sec. 1. Whenever under the provisions of these by-laws notice is required to be given to any director, officer or stockholder, it shall not be construed to require personal notice, but such notice may be given in writing by depositing the same in a post-office or letter-box, in a postpaid, sealed wrapper addressed to such director, officer or stockholder, at his or her address if and as the same appears on the books of the corporation, and the time of giving such notice shall be deemed to be the time when the same shall be thus mailed.

Sec. 2. Any stockholder, officer or Director may waive any notice required to be given under these By-Laws. (Optional.)

Article XIX — Alteration of By-Laws.

Sec. 1. The stockholders, by the vote of a majority of the stock issued and outstanding, may at any regular, or upon notice at any special meeting, alter or amend these By-Laws. (Optional.)

Sec. 2. The Board of Directors, by a vote of a majority of its members, may also alter or amend these By-Laws, except Section 1 of Article IV, but no alteration or amendment shall be so made unless proposed at a regular meeting of the Board and considered at a subsequent regular meeting. (Optional.)

Sec. 3. A copy of each amendment or alteration of these By-Laws shall be sent to each stockholder within three days after its adoption. Copies of all such amendments shall be filed with the Clerk that he may make memorandum thereof in the records of the stockholders' meetings. (Optional.)

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**Form 26. By-Law for Preferred Stock, Cumulative.
Extended.**

.....

The capital stock of said corporation shall be Two Hundred Thousand Dollars (\$200,000.00), divided into two thousand (2,000) shares of the par value of One Hundred Dollars (\$100.00) each. Of such total capital stock, one thousand (1,000) shares amounting to One Hundred Thousand Dollars (\$100,000.00) shall be Common Stock. One thousand (1,000) shares amounting to One Hundred Thousand Dollars (\$100,000.00) shall be Preferred Stock. The Preferred Stock shall be non-voting, except as hereinafter allowed. An annual dividend of seven per centum per annum, and no more, shall be paid on the Preferred Stock in semi-annual payments upon the first days of January and July, respectively, of each year, the first semi-annual payment of dividends to be made on the first day of January 1918. Dividends on the Preferred Stock shall be cumulative and shall be payable before any dividends on the Common Stock shall be paid, or set apart, so that if in any year dividends amounting to seven per centum shall not have been paid thereon, the deficiency shall be payable before any dividends shall be paid upon or set aside for the Common Stock. Whenever all cumulative dividends on the Preferred Stock for all previous years shall have been declared and paid, with the accrued interest, if any, thereon, and the accrued semi-annual instalments for the current year shall have been declared, and the money for the payment thereof set aside, the Board of Directors may declare dividends on the Common Stock, payable thereafter out of any net surplus or net profits.

In the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation, the holders of the Preferred Stock shall be entitled to be paid in full, both the par amount of their shares, and the unpaid dividends accrued thereon, with interest on said unpaid dividends from the date they should have been declared and paid, respectively, before any amount shall be paid to the holders of the Common Stock; and after the payment to the holders of the Preferred Stock of its par value and the unpaid accrued dividends thereon, with the interest, if any, the remaining assets and funds shall be divided and paid to the holders of the Common Stock, according to

their respective shares. Dividends on Preferred Stock shall be payable at the office of the Company in the City of Augusta, Maine, and shall bear interest at seven per centum per annum from the date they are due, respectively, until paid.

As between the holders of Common Stock and the holders of Preferred Stock, the Preferred Stock, to the extent of its par value, unpaid dividends thereon, and interest on unpaid dividends, if any, shall in case of liquidation, dissolution or winding up of the corporation, be deemed debts of the corporation, and shall be and remain a first claim upon all the property of the corporation after its indebtedness.

Upon the impairment of the capital stock to within one hundred and forty per cent. of the total par value of the Preferred Stock then outstanding, it shall be the duty of the Board of Directors to notify each holder of Preferred Stock of such impairment, and thereupon, whether such notice is, or is not given, or if at any time any dividend on any Preferred Stock shall remain unpaid more than ninety (90) days after it is due in accordance with the terms of this By-Law, the holders of a majority in amount of the then outstanding Preferred Stock shall have the right to appoint one or more persons trustees to take, and who shall take possession of, all the corporate assets, and which trustee, or trustees, shall forthwith proceed to liquidate and wind up said corporation, paying first, the indebtedness of the corporation, second, distributing the balance of the proceeds of the corporate assets as hereinbefore provided in case of liquidation, dissolution or winding up of the corporation. If the holders of a majority in amount of the Preferred Stock do not, in either such case and within ten days after the right accrues, exercise such right to appoint trustee or trustees to proceed with liquidation, as aforesaid, any holder of Preferred Stock upon which any dividend is unpaid, shall have the right to apply for and have a trustee or receiver appointed in any court having jurisdiction, and such trustee or receiver, when so appointed, shall have the power and exercise all the rights and perform the duties of a trustee or trustees appointed by the holder of a majority of such Preferred Stock: *Provided*, that before any such stockholder shall have a right to make such application for a trustee or receiver, he shall first serve upon the corporation at its office in Augusta, Maine, ten days' written notice of his intention so to do, and within said ten days after said notice shall have been given, any one or more of the holders of the Common Stock of said corporation shall have the absolute right to purchase all of the shares of Preferred Stock of said stockholder by paying therefor all unpaid dividends, if any, and a premium of seven per cent. upon the par value of such stock.

Each trustee appointed by the Preferred Stockholders, shall, before taking possession of any property as such trustee or receiver, give a bond in form, amount and with sureties approved by a Judge of the Supreme Judicial Court in and for Kennebec County, Maine, and which bond, when so approved, shall be filed or deposited with such officer of the court as custodian as the court may direct.

Upon any question of liquidation or winding up of the corporation, in case of impairment of Capital Stock or non-payment of dividends, as aforesaid, the Common Stock shall be non-voting, unless all of the holders of Preferred Stock, after reasonable notice and opportunity, refuse to vote thereon.

The corporation may retire Preferred Stock in amounts of twenty-five thousand dollars (\$25,000), or any multiple thereof, upon any dividend day, upon giving three months' prior notice of its intention so to do, by mail, addressed to each holder of such Preferred Stock at his address as shown by the books of the corporation, and upon payment

of all dividends due and a premium of seven per cent. upon the par value of the stock so retired. The retirement of Preferred Stock shall be *pro rata* among the several holders.

Upon such notice being given, all of the certificates of Preferred Stock shall be turned in to the treasurer of the corporation who shall upon said dividend day, or as soon thereafter as certificates may be received by him, issue in lieu thereof new certificates for the Preferred Stock to be left outstanding. Each certificate and the stock of each holder shall be reduced proportionately, and in case any certificates are not turned in, the money shall be retained by the corporation to pay for them for the proportionate reduction to be made upon them, and they shall cease to have force and validity except in so far as they shall entitle the holders to the new issue.

The corporation shall have the power at any time to issue and sell at not less than par value, additional Preferred Stock, provided that for each additional share of Preferred Stock to be issued and sold, there shall also be issued and sold at not less than the par value, one share of Common Stock. The Preferred Stock so issued shall be co-ordinate with and shall have all the rights and privileges of the stock of which this certificate represents a part, unless curtailed by the corporation at the time of issue.

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Form 27. By-Law for Preferred Stock, Cumulative. Simpler Form.

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The Capital Stock of the Company shall be Five Million Dollars (\$5,000,000) to be divided into fifty thousand (50,000) shares of the par value of One Hundred Dollars (\$100.00) each. Of said stock Two Million Five Hundred Thousand Dollars (\$2,500,000) is to be Common Stock and Two Million Five Hundred Thousand Dollars (\$2,500,000) is to be Preferred Stock.

The rights of the holders of Preferred and Common Stock shall be as follows, viz:

The Preferred Stock shall be and remain a first claim upon the property, after its indebtedness; and, in event of liquidation, the holders thereof shall be entitled to a payment out of the assets to the extent of \$110.00 and accrued dividends for each share, but to no more; all of the surplus going to the holders of the Common Stock, and to be divided *pro rata* among them.

The holders of the Preferred Stock shall be entitled to receive, out of the net earnings of the Company, one and one-half per cent. cumulative dividends, quarterly, the first payment to be made on the first day of October, 1917, and quarterly thereafter. Said dividends with interest on deferred payments, are to be paid in full each and every quarter before any payments of dividends on the Common Stock. After said payment of accrued dividends on the Preferred Stock, all of the surplus or net earnings, applicable to the payment of dividends, may be declared and paid as dividends on the Common Stock. Any holder of Preferred Stock shall have the right to exchange for Common Stock, share for share.

Form 28. By-Law for Preferred Stock, Non-Cumulative

.....

The holders of the Preferred Stock shall be entitled to receive from a surplus or net profit, arising from the business of the Company, a fixed yearly dividend of 7 per cent., payable semi-annually on the first days of April and October, before any dividend shall be set aside or paid on the Common Stock.

Dividends on the Preferred Stock shall not, however, be cumulative. Should the surplus or net profit, arising from the business of the Company, be insufficient to pay the dividend at the rate of 7 per cent. upon the Preferred Stock, such dividend only, shall be paid to the holder of the Preferred Stock as the Board of Directors may determine.

No dividend shall at any time be paid upon the Common Stock until the dividend, at the rate of 7 per cent. per annum, upon all Preferred Stock, then issued and outstanding, shall be paid or set apart.

After the dividend upon the Preferred Stock shall have been paid, the holders of the Common Stock shall be entitled to receive from the surplus or net profit, arising from the business of said corporation, dividends of such amounts as shall be determined, from time to time, by the Board of Directors, to be payable semi-annually or annually, as the Directors may determine.

The Preferred Stock shall have no preference in division of the assets upon the winding up or dissolution of the Company.

.....

The above form of by-law may be inserted either as a part of Article II of the by-laws on capital stock or as a part of the by-law on dividends, and must be changed to meet the varying conditions under which preferred stock is issued, both as to amount and time of payment of dividends and rights of preferred stockholders on dissolution of the company; the right of redemption of preferred stock of the company and the right to exchange for common stock or bonds. When either of these forms of by-laws is inserted as a part of Article II the form of by-law relating to dividends should state that it is "subject to the provisions of Article II." The statutes expressly confer upon the stockholders the right to fix all of the features and characteristics of preferred stock.

.....

Form 29. By-Law for Cumulative Voting.

.....

In all elections for directors each stockholder shall have the right to vote the number of shares of stock owned by him for as many persons as there are directors to be elected, or accumulate said votes and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute the same number among as many candidates as he shall see fit.

Form 30. By-Law for Inspectors of Elections.

.....

At all elections of directors proxies shall be received and examined, all questions touching qualification of voters, validity of proxies and the acceptance or rejection of votes shall be decided, and the result of the ballot shall be received and counted by three inspectors. Such inspectors shall be appointed by the presiding officer, shall be sworn, and shall in writing certify the result of the voting. No candidate for election shall act as inspector.

.....

Form 31. By-Law Relating to General Counsel.

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The General Counsel shall be the chief consulting officer of the Company in all legal matters, and, subject to the Board of Directors and the Executive Committee, shall have general control of all legal matters concerning the Company.

.....

Form 32. By-Law for Assistant Treasurer.

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The Board of Directors may appoint an assistant treasurer who shall have such powers and shall perform such duties as may be assigned to him by the Board of Directors.

.....

Form 33. By-Law Providing for Registrar.

.....

The Board of Directors may appoint a transfer agent and a registrar of transfers, and may require all stock certificates to bear the signature of such transfer agent and of such registrar of transfers.

.....

Form 34. By-Law Providing for General Manager.

.....

The duties of the General Manager shall be to look after and superintend all mining and manufacturing operations of the Company, and, subject to the approval of the President, to employ all assistants and labor necessary therefor, contract for compensation, and to discharge any person so employed.

He shall make a report to the President and Directors, annually, or oftener, if required so to do, setting forth the result of the operations under his charge, together with suggestions looking to the improvement and betterment of the condition of the Company, and perform such other duties as the President or the Board shall require.

CHAPTER XXIV.
FORMS FOR STOCKHOLDERS' MEETINGS.

Form 35. Notice, Stockholders' Annual Meeting.

.....

Notice of Annual Meeting

of

AMERICAN MANUFACTURING COMPANY.

Notice is Hereby Given that the Annual Meeting of the Stockholders of this Company will be held at the office of Smith & Jones, Augusta, Maine, on the first day of August, 1916, at ten o'clock a. m., for the purpose of electing a Board of Directors and a Clerk, and receiving and acting upon the reports of the officers, and for the transaction of such other business as may properly come before the meeting.

In accordance with the By-Laws of the corporation, no stock can be voted on which has been transferred on the books of the Company within three (3) days next preceding this election.

Dated the thirteenth day of July, 1916.

By order of the Board,
James Brown,
Secretary.

To Mr. Ralph B. Thomas,
Augusta, Maine.

.....

As the date of the annual meeting is fixed by the by-laws, and provision is therein made that notice of the meeting shall be given by the clerk or secretary of the corporation, no call is necessary, as the proper officer can issue this notice without any call, but in case a special meeting is desired it must be called in accordance with the provisions of the by-laws. The usual methods are as follows:

Form 36. Call of Special Meeting by President.
.....

To John R. Smith, Clerk of the Hargrave Manufacturing Company:

You are hereby directed to call a special meeting of the stockholders of the Hargrave Manufacturing Company to be held at the principal office of the Company in Augusta, Maine, on the first day of December, A. D. 1916, at ten o'clock a. m. for the purpose of considering a proposition to increase the capital stock of the corporation from Five Hundred Thousand Dollars to One Million Dollars.

Augusta, Maine, Nov. 13, 1916.

George Whitehouse,
President.

.....**Form 37. Call of Special Meeting by Directors.**
.....

To James Brown, Clerk of the American Manufacturing Company:

We, the undersigned, being a majority of the Board of Directors of said corporation hereby direct you to call a special meeting of the stockholders of said corporation to be held at the principal office of the Company in Augusta, Maine, on the third day of August, A. D. 1916, at two o'clock p. m., for the purpose of considering a proposition submitted to the corporation by William Abbotts, of Boston, Mass., to transfer to the said corporation the stock in trade, good-will and all assets, including book accounts, of his business now carried on in Boston at No. 365 Washington Street, in consideration of the issue to him of five thousand shares of the Capital Stock of the American Manufacturing Company, fully paid.

William Gay.
George L. Jones.

Augusta, Maine, July 15th, 1916.

.....**Form 38. Call of Special Meeting by Stockholders.**
.....

This call is made in the same form as the preceding notice except that the stockholders should designate themselves as "We the undersigned being the holders of two-thirds in amount of the entire capital stock issued and outstanding, as provided in Section 4 of Article III of the By-Laws."

Form 39. Notice of Special Meeting of Stockholders.

.....

Notice of Special Meeting

of

HARGRAVE MANUFACTURING COMPANY.

Notice is Hereby Given that a special meeting of the stockholders of this Company will be held at the office of Smith & Jones, Augusta, Maine, on the first day of December, 1916, at ten o'clock a. m., for the purpose of considering a proposition to increase the Capital Stock of the corporation from Five Hundred Thousand Dollars to One Million Dollars.

Dated the twenty-first day of November, 1916.

By order of the President.,

John R. Jones,
Secretary.

.....

When the call comes from the board of directors instead of "By order of the President," the notice should close, "By order of the Board."

When the stockholders of the corporation assume the right given them by the by-laws to call a special stockholders' meeting, it is presumable that the president and the board of directors have neglected or declined to do so. In such case a notice of the meeting is issued by the clerk, and usually begins with a copy of the call and then instead of the usual commencement, "Notice is Hereby Given," the notice begins, "In accordance with the foregoing call, notice is hereby given." This same method may also be adopted if desired in the case of a call by either the president or the board.

.....

Form 40. Proof of Notice.

.....

State of Maine.

Kennebec, ss.

On this first day of August, 1916, before me personally appeared

James Brown, who first being duly sworn deposes and says:

That he is Clerk of the American Manufacturing Company:
That on the fifteenth day of July, 1916, original notices of which the attached exhibit "A" of this affidavit is a copy, were properly mailed, postage prepaid, to each and every stockholder of said corporation, addressed to the last known post-office address of said stockholder, as appeared by the list thereof on record in the Clerk's office.

James Brown,

Clerk.

State of Maine.
Kennebec, ss.

Subscribed and sworn to,

Before me,

John Smith,

Notary Public.

Dated, 1st day of August, 1916.

{ *Notarial* }
{ *Seal.* }

Form 41. Waiver of Notice of Stockholders' Meeting.

Waiver of Notice

of

Meeting of the Stockholders

of

WHITMAN COPPER MINING COMPANY.

We, the undersigned, being all the Stockholders of the above named corporation, organized under the laws of the State of Maine, do hereby waive notice of the time and place of a meeting of the said Stockholders, and of the business to be transacted at said meeting.

We designate the first day of August, 1916, at ten o'clock in the forenoon as the time, and office of Smith & Jones as the place of the meeting of said stockholders. And we do hereby waive all the requirements of the Laws of the State of Maine and of the By-Laws of the Company, as to notice and of the time, place and object of the meeting.

Dated August 1, 1916.

William Johnson.
Jos. Goodall.
Frank Hall.
Geo. Abbott.
Fred Williams.
Henry Marlow.
Jasper Weldon.

When the stockholders are few in number the above is a simple method of calling a meeting, as it saves the time and trouble of sending notice to each stockholder, and of making affidavit of return.

Form 42. Application to Justice of the Peace to Call Meeting.

.....
 To William Johnson, a Justice of the Peace in and for the County of Kennebec and State of Maine:

We, the undersigned, three stockholders of the Whitman Copper Mining Company, a corporation duly existing under the Laws of the State of Maine and having an established place of business at Augusta in said County, hereby represent that a meeting of the stockholders of said corporation cannot be called in accordance with the provisions therefor in the By-Laws of said corporation, and therefore make written application to you to issue your warrant to one of the signers hereto, directing him to call a meeting of the stockholders of said corporation for the purpose of electing a Board of Directors and a Clerk, to be held at Augusta, Maine, on the first day of August, 1916, at ten o'clock, a. m., by giving to all the stockholders of said corporation the notice required by Section 12 of Chapter 51 of the Revised Statutes.

Dated, Augusta, Maine, July 16, 1916.

Jos. Goodall.
 Frank Hall.
 Geo. Abbott.

.....
 The warrant would be issued in the following form:

Form 43. Warrant of Justice of the Peace.

.....
 State of Maine.
 Kennebec, ss.

To Joseph Goodall, one of the said applicants,

Greeting:

(L. S.)

Pursuant to the foregoing application you are hereby directed in the name of the State of Maine to notify the stockholders of the Whitman Copper Mining Company to meet at the City Hall in the City of Augusta in said County on the first day of August, 1916, at ten o'clock a. m., for the purposes mentioned in said application, made a part of this warrant, by delivering a copy of said notice to each stockholder of

said corporation, or publishing same in a newspaper published in said Augusta seven days before the meeting.

Hereby fail not and make due return of your doings thereon.

Given under my hand and seal at Augusta, in said County, this sixteenth day of July, 1916.

William Johnson,
Justice of the Peace.

.....

The person to whom this warrant is directed should make a copy of the application and warrant and either deliver it in person to each stockholder of the corporation or publish it as directed, first appending his signature thereto, seven days at least before the time of the meeting.

At the time and place appointed either the Justice of the Peace who issued the warrant, or the person to whom his warrant was directed, may call the meeting to order, and preside over said meeting, until a clerk is chosen and qualified, if there is no other officer present whose duty it is to preside.

Form 44. Proxy, Annual Meeting.

.....

AMERICAN MANUFACTURING COMPANY.

Proxy—Stockholders' Meeting.

Know all Men by these Presents:

That I, the undersigned, being the owner of five hundred shares of the Capital Stock of the Corporation above named, do hereby constitute and appoint C. B. Smith my true and lawful attorney, in my name, place and stead, to vote upon the stock owned by me or standing in my name, as my proxy, at the Annual Meeting of the Stockholders of said Company, to be held at the Company's office, with Smith & Jones, Augusta, Maine, on the first day of August, 1916, or on such other day as the meeting may be thereafter held by adjournment or otherwise, according to the number of votes I am now or may then be entitled to cast, hereby granting the said attorney full power and authority to act for me and in my name at the said meeting or meetings, in voting for Directors of the said Company or otherwise, and in the transaction of such other business as may come before the meeting, as

fully as I could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or substitute may do in my place, name and stead.

In Witness Whereof, I have hereunto set my hand and seal
this first day of August, 1916.

Witness:

Wm. Johnson.

Jos. Franklin. (L. S.)

.....

If the meeting is a special meeting instead of an annual meeting, the only change necessary is to substitute the word "special" for "annual" in the proxy.

The above form of proxy contains power of substitution authorizing the person named therein to substitute someone to act for him at the meeting. If it is desired that the person named therein, and no other, shall act, the authority to substitute should be omitted.

Form 45. Special Proxy.

HARGRAVE MANUFACTURING COMPANY.

Proxy—Stockholders' Meeting.

Know all Men by these Presents:

That I, the undersigned, being the owner of five hundred shares of the Capital Stock of the Corporation above named, do hereby constitute and appoint C. B. Jones my true and lawful attorney, in my name, place and stead, to vote upon the stock owned by me or standing in my name, as my proxy, at the special meeting of the Stockholders of said Company, to be held at the Company's office, with Smith & Jones, Augusta, Maine, on the first day of December, 1916, or on such other day as the meeting may be thereafter held by adjournment or otherwise, according to the number of votes I am now or may then be entitled to cast, for the purpose of voting to increase the Capital Stock of said corporation from Five Hundred Thousand Dollars to One Million Dollars, and for no other purpose.

In Witness Whereof, I have hereunto set my hand and seal
this first day of December, 1916.

Witness:

Wm. French.

Howard Wilson. (L. S.)

Form 46. Revocation of Proxy.

.....

I hereby revoke and annul all proxies by me made, whatever the form or in whosoever name given, so far as the same authorizes any person or persons to represent me and vote in my name or stead at any meeting or meetings of the American Manufacturing Company.

Dated, December 1, A. D. 1916.

John Dutton.

.....

No matter how many proxies may have been given, this form of revocation annuls all of them and the last proxy will authorize its holder to vote the stock it represents.

The statute provides that a stockholder may be represented either by proxy or by general power of attorney. The proxy must be given not more than thirty days before the meeting named therein, and is not valid after adjournment thereof. A general power of attorney is good from the time issued until it is revoked.

If it is intended that the holder of such power of attorney shall execute any conveyance of real estate, the power of attorney should be acknowledged before a Justice of the Peace or a Notary Public, so that it can be recorded in the registry of deeds. A seal must be attached. The letters "L. S." are not sufficient.

Form 47. Minutes of Annual Meeting of Stockholders.

.....

The annual stockholders' meeting of W. H. Potter Company, duly called and notified, was held at the principal office of the Company, to-wit, the office of Smith & Jones, Augusta, Maine, on Tuesday, the sixth day of February, 1916, at two o'clock p. m.

The meeting was called to order by the Clerk, who read the notice of same, and affidavit of service thereof, which was ordered placed on file. Said notice and affidavit are as follows:

(Here copy them.)

There were present J. R. Peters holding proxies for the following named stockholders representing the number of shares of stock set opposite their names:

W. H. Johnson	240 shares.
H. E. Keyes	67 "
L. E. Keyes	23 "
Hazel Keyes	23 "
H. S. Potter	10 "
M. D. Lombard	4 "
Irwin Shepard	2 "
Mary B. Shepard	2 "

also Fred Bogue, holding proxy for H. J. Willis, for one share; also James Kenny, holding proxy for James Lewis, for one share, in all amounting to 373 shares.

As it appeared from the certificate of the Secretary on file with the Clerk that the total number of shares issued and outstanding was 380, more than a quorum was present so that any action taken at the meeting would be legal.

In the absence of the President, Fred Bogue was unanimously chosen Chairman of the meeting.

The following report of the President was then presented and read as follows:

"Report of the President of the W. H. POTTER COMPANY.

To the Stockholders:

The first part of the past year was in some respects a very hard one, as the results did not seem in proportion to the effort, but the latter part showed much improvement in this respect and prospects for the coming year are very bright.

We hope by the end of the year to show a decided improvement in every respect.

Respectfully submitted,

W. H. Johnson,

President."

Upon motion therefor, duly seconded, it was unanimously Voted, To accept the same, and to waive all other reports of officers and committees.

Upon motion therefor, duly seconded, it was unanimously

Voted, To proceed to the election of a Board of Directors and a Clerk for the ensuing year.

Thereupon a ballot was had and the following named persons having each received 373 votes, the whole number cast, were declared unanimously elected to their respective offices, namely:

W. H. Johnson,	} <i>Directors.</i>
H. E. Keyes,	
E. S. Lewis,	
C. L. Jones, Clerk.	

The Clerk was then sworn according to the following original record of his oath:

State of Maine.
Kennebec, ss.

February 6, 1916.

Personally appeared C. L. Jones and made oath that he would faithfully and impartially perform the duties devolving upon him as Clerk of W. H. Potter Company.

Before me,
Fred Bogue,
Justice of the Peace.

Upon motion therefor, duly seconded, it was unanimously Voted, That all the acts and doings of the Board of Directors, for the year last past, whether official acts or the transaction of business, are hereby ratified and approved.

No other business coming before the meeting, it was unanimously Voted, To adjourn.

A true record:

Attest:
C. L. Jones,
Clerk.

See § 86 holding that such waiver is of no effect unless the stockholders have knowledge of what the acts and doings of the board of directors have been.

Form 48. Minutes of Special Meeting of Stockholders.

A special meeting of the stockholders of the American Manufacturing Company, duly called and notified, was held at the principal office of the Company in Augusta, Maine, on Wednesday, the second day of January, 1917, at 2 o'clock p. m.

The meeting was called to order by the President. The Clerk read the call for the meeting issued by the President, the notice of the meeting sent all stockholders by the Clerk, and the Clerk's affidavit in regard to service of same. As such call, notice and affidavit appeared to be in accordance with the provisions of the By-Laws of the Company they were ordered placed on file, and made a part of this record. The following is a copy of the same:

(Here copy the call, notice and affidavit.)

There were present the following stockholders owning the number of shares set opposite their names:

James Thompson.....	1,000 shares
William Good	1,200 shares
James Keene	2,000 shares
Fred King	500 shares
Henry Hall	1,000 shares
Frank Lambert	200 shares

Also P. J. Thompson holding proxy for C. P. Reynolds owning ten shares, making a total of 5,910 shares.

As it appeared from the stock records that the total number of shares issued and outstanding was 7,000, more than a quorum was present, so that any action taken at the meeting would be legal. On motion therefor it was unanimously

Voted, That the President and Treasurer are hereby authorized and directed in the name and on behalf of and under the corporate seal of this Company to join in a lease of the plant, property and assets of all kinds, including the good-will, of the Augusta Machine Company upon the following terms:

First. Said property shall be delivered to this Company under such lease free of debt save the first mortgage bonds of the said Augusta Machine Company.

Second. The term of said lease shall continue for a period of twenty-five years from the date thereof.

Third. During its occupancy therein this Company shall promptly pay the interest on the aforesaid first mortgage bonds of said lessor and all taxes or assessments of said property assessed or imposed by any lawful authority.

Fourth. This Company agrees to pay in full for the rental of said property, in addition to the interest on said bonds and the taxes as above provided, Ten Thousand Dollars of the Capital Stock of this Company, the same to be issued and delivered to the Treasurer of the said Augusta Machine Company with the delivery of said lease, to be by him transferred and delivered to the stockholders of the Augusta Machine Company *pro rata* in accordance with their respective holdings of the Capital Stock of said Augusta Machine Company.

Voted, Said lease shall contain such other terms and covenants necessary to accomplish the foregoing purposes not inconsistent with the foregoing vote, as to the President and Treasurer may seem fit and proper.

No other business coming before the meeting it was unanimously

Voted, To adjourn.

A true record:

Attest:

George Ward,

Clerk.

Form 49. Assent to Meeting.

The same form of assent to special or annual meeting may be used as to the first meeting for organization. (See Form II.) It is always advisable to have such a form of assent signed as part of the record as thereby all omissions or informalities are cured.

CHAPTER XXV.

FORMS FOR DIRECTORS' MEETINGS.

Form 50. Notice of Regular Meeting of Directors.

AMERICAN MANUFACTURING COMPANY.

Water Street, Augusta, Maine.

To W. T. Smith, Portland, Maine:

You are hereby notified that the regular monthly meeting of the Board of Directors of the American Manufacturing Company will be held at the Company's office at Augusta, Maine, on the third day of January, 1917, at ten o'clock.

George Ward,

Secretary.

Dated 28th day of December, 1916.

Form 51. Call of Special Meeting of Directors.

To the Secretary of the American Manufacturing Company:

In accordance with the authority vested in me by the By-Laws of this Company, I hereby call a special meeting of the Board of Directors, to be held at the office of the Company on the twenty-third day of January, 1917, at two o'clock p. m., for the purpose of acting upon the resignation of the Treasurer of the Company, the appointment of a committee to examine his accounts and the election of his successors, and the transaction of any other business in connection therewith that may be necessary, and you are hereby instructed to send out notices of said meeting as required by the By-Laws of this Company.

Joseph Wood,

President.

Dated, January 16, 1917.

Form 52. Notice, Special Meeting of Directors.

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AMERICAN MANUFACTURING COMPANY.

Water Street, Augusta, Maine.

To W. T. Smith, Portland, Maine:

You are hereby notified that pursuant to a call of the President a special meeting of the Board of Directors of this Company will be held at the office of the Company in Augusta, Maine, on the twenty-third day of January, 1917, at two o'clock p. m., for the purpose of acting upon the resignation of the treasurer of the Company, the appointment of a committee to examine his accounts and the election of his successor, and the transaction of any other business in connection therewith that may be necessary.

George Ward,
Secretary.

Dated, January 17, 1917.

.....

More frequently, however, notice of the meeting is waived by all of the directors. In such case the following form may be used.

.....

Form 53. Waiver of Notice, Directors'.

.....

Waiver of Notice

of

Meeting of the Board of Directors

of

AMERICAN MANUFACTURING COMPANY.

We, the undersigned, being the Board of Directors of the above named corporation, organized under the laws of the State of Maine, do hereby waive notice of the time and place of a special meeting of the said Board of Directors, and of the business to be transacted at said meeting.

We designate the twenty-third day of January, 1917, at two o'clock in the afternoon as the time, and office of Smith & Jones in Augusta, Maine, as the place of the said meeting of said Board of Directors. And we do hereby waive all the requirements of the Laws of the State of Maine and of the By-Laws of the Company, as to notice of the time, place and object of the meeting.

Dated, January 23, 1917.

Joseph Wood.
George Ward.
George L. Jones.

Form 54. Minutes of Directors' Meeting.

The regular monthly meeting of the Board of Directors of American Manufacturing Company, duly called and notified by the Secretary as required by the By-Laws, was held at the office of the Company in Augusta, Maine, on Monday, the third day of January, 1917, at ten o'clock in the forenoon.

There were present Joseph Wood, George Ward, and George L. Jones, being a majority of the Directors of the Company.

The President, Mr. Joseph Wood, presided and the Secretary, George Ward, was present.

The minutes of the last regular meeting of the Board and of a special meeting held on the twelfth day of December were read by the Secretary, and thereupon on motion duly seconded, the records were approved.

The Secretary then read the resignation of George L. Jones, as Treasurer of the Company to take effect upon the election and qualification of his successor.

Upon motion, therefor, duly seconded, it was unanimously Voted, To accept the resignation of the Treasurer and to proceed to the election of a new Treasurer. Thereupon a ballot was had and William E. Smith having received four votes, the whole number cast, was declared unanimously elected Treasurer of the Company.

No other business coming before the meeting it was

Voted, To adjourn.

A true record:

Attest:

George Ward,
Secretary.

If the meeting is a special meeting instead of a regular one, the record should contain after the preliminary statements, a copy of the call and notice of the meeting, or of the waiver of notice signed by all the directors, if it were held on such a waiver.

CHAPTER XXVI.
DIVIDENDS AND ASSESSMENTS.
FORMS.

Form 55. Resolution, Dividend Common Stock.

.....

Resolved, That an annual dividend of five per cent. on the capital stock of this corporation issued and outstanding be, and the same is hereby declared from the surplus profits of said corporation, payable at the office of the Company on the first day of December, 1916.

.....

If payment is to be made at once no notice of such resolution is necessary, but if the date fixed for payment is some time in advance, notice should be given the stockholders, since otherwise they might transfer their stock in ignorance of it.

Such notice should be in the following form

Form 56. Notice of Dividend

.....

Office of

ALVEY MOLDING COMPANY,

Augusta, Maine.

To the stockholders of the Alvey Molding Company:

Notice is Hereby Given that at a meeting of the Board of Directors held on the first day of November, 1916, a dividend of five per cent. was

declared from the surplus profits of the corporation for the year ending November 30, 1916. Such dividend will be paid December 1, 1916, to all stockholders of record November 20, 1916. The stock transfer books will be closed November 20, 1916.

Thomas R. Jones,
Treasurer.

.....

The form of resolution for dividend on preferred stock may be as follows:

Form 57. Resolution, Dividend Preferred Stock.

.....

Voted, That the sum of five thousand dollars be, and the same is hereby appropriated and set apart from the surplus profits of this Corporation for the payment of the regular semi-annual dividend of three per cent. on the Preferred Stock of this Corporation, the same to be payable on the first day of December, 1916. And the Treasurer is hereby authorized and directed to pay same when due.

.....

Form 58. Resolution, Levying Assessment on Stock Subscription.

.....

Resolved, That for the purpose of increasing the plant of the Company by the erection of a new building adjoining the one now in operation an assessment of twenty-five per cent., being twenty-five dollars for each share, be and the same is hereby levied upon each and every share of the subscribed capital stock of this Corporation, payable on or before the first day of August, to the Treasurer of this Corporation at its office at Augusta, Maine.

All subscribers who fail to make such payment on or before the first day of September, 1916, are hereby declared delinquent, and shares of their capital stock sufficient to pay the assessment due on the number of shares subscribed for by them, each respectively, shall be advertised and sold by the Treasurer on or before the first day of October, 1916, in accordance with the By-Laws of this Corporation.

The Secretary is hereby authorized and directed to give all notices required by the By-Laws relating to this assessment, and to the sale of shares of delinquent subscribers

.....

Form 59. Notice of Levy of Assessment.

.....

Office of the

AMERICAN MANUFACTURING COMPANY,

Augusta, Maine.

Notice is Hereby Given that by resolution of the Board of Directors adopted July 3rd, 1916, an assessment of twenty-five per cent. on the subscribed capital stock of this Corporation was called for to be paid in cash to the Treasurer of this Corporation on or before the first day of August, 1916.

In accordance with the provisions of the By-Laws if any subscriber fails to pay said assessment when due, enough of the shares subscribed for by him to pay the assessments on his total number of shares will be advertised and sold at public auction on or before the first day of October, 1916.

Dated July 7, 1916.

James Brown,
Secretary.

.....

If any subscriber fails to pay his assessment at the time when due, notice should be given as required by the by-laws of the corporation, and enough stock to pay the assessment may be sold by the treasurer. The following form of notice is sufficient:

Form 60. Notice of Sale of Stock for Unpaid Assessment

.....

Whereas, S. E. Thompson, as subscriber for twenty-five shares of the capital stock of the American Manufacturing Company, of which subscription fifty per cent. has been paid, has failed to pay the twenty-five per cent. assessment levied thereon by said corporation, and which was due and payable on the first day of August, 1916, and, whereas, thirty days has elapsed since said first day of August, notice is hereby given that the undersigned, Treasurer of said American Manufacturing Company, will sell at public auction at the office of the Company in Augusta, Maine, on the first day of October, 1916, at ten o'clock a. m., a sufficient number of said shares to pay the assessment due with all costs of advertising and expenses of sale.

Dated, September 5, 1916.

George L. Jones,
Treasurer.

CHAPTER XXVII.

EXCHANGE OF PROPERTY FOR STOCK. FORMS.

Form 61. Proposal to Exchange Property for Stock.

.....

To the Howard Mercantile Company,

Augusta, Maine.

Gentlemen:

I hereby propose to sell and transfer to your Company in exchange for \$100,000 of the capital stock thereof, full paid and non-assessable, the business now conducted by me at No. 59 Center Street, Augusta, Maine, for the manufacture and sale of boots and shoes, consisting of the plant, stock on hand and in process of manufacture, raw material, machinery, tools and apparatus of every description, together with all accounts due and bills receivable, including cash on hand and all trade-marks, patents and secret processes and the good-will of the business, with the understanding that your Company is to take over the business as a going concern and assume and pay all outstanding obligations of every kind.

If this proposition is accepted, the above mentioned \$100,000 of capital stock is to be issued to my order upon the delivery to your Company of proper instruments of transfer and conveyance of the above mentioned property and rights.

Very truly yours,

William H. Rigby.

Dated, Augusta, Maine, December 1st, 1916.

.....

Such a proposition should properly be considered and acted upon by the board of directors, but it is always better that their action be ratified and approved by the stockholders. Sometimes the stockholders first consider the proposition and authorize the board of directors to accept it.

Form 62. Directors' Resolution.

Resolved, That this Company accept the proposition of William H. Rigby to sell to this Company the plant, property, rights and credits, good-will, etc., of the business carried on by him as a boot and shoe manufacturer in Augusta, Maine, and the Board of Directors after making due investigation as to the value and utility of said property (or patent rights) for the purposes of the corporation do hereby adjudge and declare that the said property is of the fair value of \$100,000, and that the same is necessary for the business of the Company.

Resolved, That the agreement for the sale of said property presented at this meeting be, and the same hereby is approved, and the President and Treasurer are hereby authorized and directed to execute said agreement in the name of and on behalf of this Company and to affix the corporate seal thereto.

Resolved, That the President and Treasurer be, and they hereby are authorized and directed to issue certificates of the full paid capital stock of this Company to the amount of \$100,000 to the order of the said William H. Rigby, as provided in said agreement.

Form 63. Stockholders' Resolution.

Resolved, That the action of the Board of Directors taken on the first day of December, 1916, whereby they voted to purchase of William H. Rigby, his business as a boot and shoe manufacturer at Augusta, Maine, as specified in said resolution, and to issue to the order of William H. Rigby the full paid stock of this Company to the amount of \$100,000 in payment therefor, is hereby ratified and approved.

Form 64. Stockholders' Resolution Directing Purchase

Whereas, William H. Rigby has offered to sell to this Company his business as a boot and shoe manufacturer at Augusta, Maine, including all the plant, property and assets, and the good-will of the business in consideration that this Company will issue to the order of the said William H. Rigby the capital stock of this Company to the amount of \$100,000 full paid and non-assessable, as appears by the written proposition of the said William H. Rigby, dated December 1st, 1916, and

Whereas, It appears to the stockholders that said property is necessary for the business of this Company and that the same is of the fair value of \$100,000,

Resolved, That the Board of Directors of this Company be and they are hereby authorized in their discretion to purchase the property above mentioned and to issue said stock in payment therefor.

The following forms are resolutions of stockholders.

Form 65. Resolution Changing Name.

.....

Resolved, That the name of this corporation be changed from "American Manufacturing Company" to "The Augusta Manufacturing Company;" that the By-Laws be amended accordingly; and that the Clerk file with the Secretary of State a certificate of the action of this meeting.

.....

Form 66. Resolution Increasing Capital Stock.

.....

Whereas, It appears that the amount of capital stock of this corporation is insufficient for the purposes for which said corporation is organized, therefore.

Resolved, That the capital stock of this corporation be increased from the sum of Five Hundred Thousand Dollars, consisting of Five Thousand shares of the par value of One Hundred Dollars each, to the sum of One Million Dollars, consisting of Ten Thousand shares of the par value of One Hundred Dollars, of which five thousand shares shall be common stock and five thousand shares shall be preferred stock; and that the preferred stock shall have such preferences and shall be entitled to such dividends as the stockholders by resolution may fix and determine; that the By-Laws be amended in accordance herewith; that the Clerk file with the Secretary of State a certificate of the action of this meeting and obtain his certificate therefor within ten days thereof; and that the Treasurer pay to the Treasurer of State the necessary fee required for such increase.

.....

Form 67. Resolution Decreasing Capital Stock.

.....

Resolved, That the capital stock of this Company be decreased from Five Hundred Thousand Dollars to Two Hundred Fifty Thousand Dollars, and that the Clerk of this corporation give notice to the Secretary of State of the action of this meeting within ten days hereafter, and obtain his certificate thereto.

Resolved, That within three months hereafter each stockholder of this corporation shall surrender one-half the number of shares of stock now owned by him, so that thereafter each stockholder shall have the same proportion of the whole capital as before the decrease herein provided for.

When the stock is to be decreased under the act of 1915 now Ch. 51, § 43 when there is unissued stock the second resolution may be omitted and in place thereof the following inserted:

.....

Form 68.

Resolved, That since there remains in the treasury unissued capital stock of this Company to the amount of Two Hundred Fifty Thousand Dollars such decrease be effected by retiring such unissued capital stock to said amount.

.....

Form 69. Resolution, Decrease When Capital Stock is Impaired.

.....

Whereas it appears from the report of the Treasurer of this corporation that the assets of the corporation have been so diminished by loss and by depreciation of its property that its capital stock is impaired to the extent of at least twenty-five per cent. so that this corporation cannot continue successfully to do business on its present capital stock; now therefore be it

Resolved, By vote of more than two-thirds in amount of all the outstanding stock of this corporation at a meeting of the stockholders thereof, legally called therefor, that the capital stock of this corporation be reduced to the extent of such impairment, viz: from One Million Dollars to Seven Hundred Fifty Thousand Dollars, and that the par value of all shares issued, or to be issued, be proportionately reduced from One Hundred Dollars to Seventy-five Dollars; that the By-Laws be amended in accordance herewith, and that the Clerk at once file with the Secretary of State a certificate of the action of this meeting.

.....

Form 70. Resolution, Change in Number of Directors.

.....

Resolved, That the number of Directors of this corporation be increased from five to nine; that the By-Laws be amended accordingly, and that the Clerk of this corporation file with the Secretary of State within ten days hereafter certificate of the action of this meeting, and obtain his certificate thereof.

Form 71. Resolution, Change of Par Value.

.....

Resolved, That the par value of the shares of this corporation be changed from Five Dollars to Ten Dollars, and that the number of shares to be issued be correspondingly decreased from one thousand to five hundred; that the By-Laws be amended accordingly, and that the Clerk at once file with the Secretary of State a certificate of the action of this meeting, and obtain his certificate thereof.

.....

Form 72. Resolution, Change of Location.

.....

Resolved, That for the more convenient transaction of its business the location of this corporation be changed from Kennebec County to Cumberland County; that hereafter the principal office of this corporation shall be at Portland, Maine; that the By-Laws be amended accordingly, and that the Clerk within thirty days hereafter file in the Registry of Deeds in the County of Kennebec, and also in the County of Cumberland a certificate of the action of this meeting, and also file a similar certificate in the office of the Secretary of State.

.....

Form 73. Certificate to Secretary of State for Change of Charter.

.....

To the Honorable Secretary of State of Maine:

I, William E. Smith, of Augusta, County of Kennebec and State of Maine, hereby certify that I am Clerk of the Hudson Chemical Company, a corporation duly organized under the laws of the State of Maine, having its principal office at said Augusta, Maine; that at a special meeting of the stockholders of said corporation held at the principal office thereof on the fifth day of December, 1916, at which meeting a majority of the capital stock of said corporation issued and outstanding was represented in person or by proxy, it was unanimously Voted, To increase the number of Directors of said corporation from five to nine.

I further certify that said meeting was duly and legally called and notified in accordance with the provisions of the By-Laws of the corporation, and that the action proposed to be taken at said meeting was specified in said notice.

Dated, December 6, 1916.

William E. Smith,

Clerk.

Resolutions authorizing any of the foregoing changes may be adopted by a vote of a majority of the stock issued and outstanding, except the resolution diminishing the capital stock on account of the impairment of the capital. Such resolution requires the consent of two-thirds of the outstanding stock, therefore the certificate of the clerk of such reduction should contain the additional statement that the resolution was adopted by "a vote of at least two-thirds in amount of the capital stock of the corporation issued and outstanding."

CHAPTER XXVIII.

CERTIFICATES AND SIGNATURES.

Form 74. Certificate of Clerk of his Election.

.....
I hereby certify that on the fifth day of December, 1916, I was duly elected Clerk of the Hudson Chemical Company, a corporation organized under the laws of the State of Maine, and having its principal office at Augusta, Maine; that I have accepted and qualified for said office, and that my residence is Augusta, Maine.

Dated, December 6, 1916.

William E. Smith,
Clerk.

.....
This certificate need not be sworn to, but should be filed in the registry of deeds in the county where the company has its principal office within twenty days after the election of such clerk.

In case of the re-election of a former clerk, filing of such certificate is not necessary. A certificate is only required to be filed when there is a change in the office.

Form 75. Certificate of Copies of Record.

.....
I, William E. Smith, of Augusta, Maine, hereby certify that I am Clerk of the Hudson Chemical Company, a corporation organized under the laws of the State of Maine, and having its principal office at said Augusta, Maine, and that the foregoing is a true copy of the record of the special meeting of the stockholders of said corporation held at the Company's principal office on the fifth day of December, 1916; said original record being on file in the Company's office, and by me made.

Dated, December 6, 1916.

William E. Smith,
Clerk.

Form 76. Corporate Signatures.

.....

(a) *John Love Manufacturing Company,*
By Henry H. Thompson,
President.

(b) In Witness Whereof the said John Love Manufacturing Company has hereunto caused its corporate name to be signed and its corporate seal hereunto affixed by Henry H. Thompson, its President, and by Samuel T. Williams, its Treasurer, who severally covenant that they are duly authorized thereto, this sixth day of December, 1916.

John Love Manufacturing Company,
By Henry H. Thompson, President.
Samuel T. Williams, Treasurer.

{ *Corporate* }
 { *Seal* }

.....

Sometimes it is preferred that the signature of the corporation be signed by the president and the instrument simply attested by the secretary, in which case the form should be changed accordingly. See (§ 104 Execution of Papers by officers.)

Form 77. Acknowledgment by Officer of Corporation.

.....

State of Maine.

Kennebec, ss.

December 5, 1916.

Then personally appeared the above named Henry H. Thompson, President of the John Love Manufacturing Company, who acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of the said corporation.

Before me,

Samuel T. Williams,

Notary Public.

{ *Notarial* }
 { *Seal.* }

CHAPTER XXIX.

STOCK CERTIFICATES.

Form 78. Certificate, Common Stock.

No 563
100 Shares.
Incorporated under the Laws of
The State of Maine.
PINE-TREE LUMBER COMPANY.
Capital Stock, \$500,000.

This is to Certify that Samuel G. Hebert is the owner of One Hundred full paid and non-assessable Shares of the Capital Stock of Pine-Tree Lumber Company, transferrable only on the books of the Company by the holder hereof; in person or by duly authorized attorney upon surrender of this Certificate properly endorsed.

Witness the Seal of the Company and the signatures of its duly authorized officers affixed this 5th day of June, 1916.

{
Corporate
Seal.
}

S. C. E. Beale,
Treasurer.

J. W. Higgins,
President.

Shares, \$100 Each.

(For stub, see Form 79.)

Form 79. Stub.

Certificate No. 563.	
For 100 Shares.	
Issued for Cash.	
Dated June 5th, 1916.	
Issued to Samuel G. Hebert of	
Augusta, Maine.	
Received the above Certificate	
June 5th, 1916.	
Samuel G. Hebert.	
Certificate No.....	
Cancelled.....	191..
Certificate No.....	issued in its
place.....	191..

Form 80. Certificate, Preferred Stock.

No. 321.	50 Shares
Incorporated under the Laws of	
The State of Maine.	
PINE-TREE LUMBER COMPANY.	
Capital Stock.....	\$500,000.
Common	\$250,000.
Preferred	\$250,000.
<p><i>This Certifies</i> that Samuel G. Hebert is the owner of Fifty Shares of the Preferred Capital Stock of Pine-Tree Lumber Company, full paid and non-assessable, transferrable only on the books of the Company by the holder hereof in person or by attorney upon surrender of this Certificate properly endorsed.</p> <p>This stock is subject to the conditions printed on the back hereof.</p>	
<div>{ Corporate Seal }</div>	<p>In Witness Whereof, the said Company has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Company this seventh day of March, A. D. 1916.</p>
S. C. E. Beale, Treasurer.	J. W. Higgins. President.
Shares, \$100 Each.	

The stub of this certificate is practically the same as the other. Frequently where the by-laws relating to preferred stock are brief the substance of them is embodied in the face of the certificate, otherwise the by-law is usually printed in full on the back of the certificate.

.....

Form 81. Provision to be Inserted in Face of Certificate.

.....

This stock is part of an issue of preferred stock amounting in all to two hundred fifty thousand dollars par value. The owners of this preferred stock are entitled to receive and the Company is bound to pay out of its surplus or net earnings a dividend at the rate of six per cent. per annum, cumulative, and payable annually before any dividend shall be set apart or paid on the common stock. This preferred stock may, by vote of a majority of the board of directors, be redeemed at any time after the first day of January, 1920, at the price of \$105 per share and any cumulative dividends. In case of liquidation or dissolution the owners of this preferred stock shall be paid the par value of their shares and the amount of dividend, unpaid thereon before any amount shall be distributed among the owners of the common stock, and after the payment of the par value of the common stock to the owners thereof the balance of the assets shall be distributed ratably among all the stockholders without preference.

.....

All certificates usually contain a statement that the stock is "Full paid and non-assessable."

When corporations issue both preferred and common stock the certificates are usually distinguished by being printed in different colors, or, if not, the words "Common" and "Preferred" are printed in large letters across the face of the certificate in the same color in which the body of the certificate is printed.

.....

Form 82. Assignment of Certificate in Blank.

.....

For Value Received, I hereby sell, assign and transfer unto..... Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint..... Attorney to transfer the said Stock on the books of the within named Corporation with full power of substitution in the premises.

Dated September 5th, 1916

C. S. Jacobs.

In the presence of
W. A. Schaff.

Certificates are usually assigned in blank. In this way they may be passed from hand to hand before being finally transferred on the books of the company, or the assignee may fill in the assignment with the name of any person he sees fit.

If a stock subscription is to be transferred, the form which follows may be used.

Form 83. Transfer of Stock Subscription.

AMERICAN MANUFACTURING COMPANY.

Office with
SMITH & JONES
Augusta, Maine.

Know all Men by these Presents:

That I, William Gay, in consideration of One Dollar to me in hand paid, the receipt whereof is hereby acknowledged, and for other good and valuable considerations, have sold, assigned, transferred and set over, and by these presents do sell, assign, transfer and set over unto Samuel Thompson my right, title, and interest as a subscriber to the stock of American Manufacturing Company, a corporation organized under the laws of the State of Maine, to the extent of one share and I do hereby direct the said Company to issue the certificate for said one share to and in the name of said Samuel Thompson or of such other person as he may name.

In Witness Whereof, I have hereunto set my hand and seal this sixteenth day of July, 1916.

Sealed and delivered in the presence of

James Brown.

William Gay. (L. S.)

I hereby accept the above assignment,

Samuel Thompson,
Transferee.

Form 84. Receipt for Transferred Stock Subscription.

Whereas, William Gay, one of the original incorporators, and a subscriber for one share of the capital stock of American Manufacturing Company, organized on the second day of July, 1916, at the office of Smith & Jones, in Augusta, Maine, has sold, assigned and transferred to me the undersigned all right, title and interest in and under such subscription, in consideration thereof I accept said assignment and agree to hold the said assignor harmless from any liability which may arise by reason of said subscription.

Dated, July 16, 1916.

Samuel Thompson, (L. S.)

CHAPTER XXX.

MISCELLANEOUS FORMS.

Form 85. Resignation of Director.

.....

Augusta, Maine, December 5, 1916.

To the President and Board of Directors of American Manufacturing Company.

Gentlemen:

I hereby tender my resignation as Director of the Company, the same to take effect at the adjournment of the meeting at which this resignation is filed.

Respectfully submitted,

Joseph Wood.

.....

Form 86. Resignation of Officer.

.....

Augusta, Maine, January 3, 1917.

To the President and Board of Directors of American Manufacturing Company.

Gentlemen:

I hereby tender my resignation as Treasurer of the Company, the same to take effect upon the election and qualification of my successor.

Yours truly,

George L. Jones.

.....

Form 87. Indemnity Bond, Lost Certificate.

.....

Know all Men by these Presents, That we, William Gay, of Augusta, Maine, as principal, and Henry Brown, of Boston, Mass., as surety, are held and firmly bound unto the American Manufacturing Company of Augusta, a corporation duly organized under the laws of the

State of Maine, its successors and assigns, in the sum of Three Thousand Dollars (\$3,000), to the payment of which to the said corporation its successors and assigns, we do, by these presents, jointly and severally firmly bind ourselves, our heirs, executors and administrators.

Signed, sealed this fifth day of December, 1916.

The condition of the above obligation is that:

Whereas, The said William Gay, the owner of record of twenty-five (25) shares of the capital stock of the American Manufacturing Company of Augusta, of the par value of \$100 each, has made application to the Board of Directors of the said Company for the issue to him of a new certificate for the said twenty-five shares of stock, alleging that the original certificate, No. 274, issued to him therefor on the twenty-first day of July, 1916, is lost, stolen or destroyed, and that its present whereabouts are unknown to him; and,

Whereas, The said application has been granted, and the said new certificate for twenty-five shares of the stock of the American Manufacturing Company of Augusta, pursuant to due and formal resolution of the said Board of Directors, was this day issued to the said William Gay.

Now Therefore, If the said William Gay, his heirs, executors or administrators, or any of them, do and shall from time to time, and at all times, hereafter, save, defend, keep harmless and indemnify the said American Manufacturing Company of Augusta, its legal successors and assigns, of, from and against all demands, claims, or causes of action, arising from or on account of said certificate No. 274 for twenty-five shares of the capital stock of the said American Manufacturing Company of Augusta, and of and from all costs, damages and expenses that shall or may arise therefrom, and shall also deliver, or cause to be delivered up to the said American Manufacturing Company of Augusta, the said missing certificate No. 274 for cancellation, whenever and so soon as the same shall be found, then this obligation shall be void; otherwise to remain in full force and effect.

William Gay (I. S.)

Henry Brown. (L. S.)

Signed, sealed and delivered
in the presence of

Frank Herman.

Henry Sherman.

Form 88. Treasurer's Bond.

Know all Men by these Presents, That we, William E. Smith, as principal and George Wood and Samuel Thompson, as sureties, all of the City of Augusta and State of Maine, are held and firmly bound unto the American Manufacturing Company in the sum of Two Thousand Dollars, lawful money of the United States, to be paid to the said American Manufacturing Company, its successors and assigns; to which payment, well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally, firmly by these presents.

Sealed with our seals. Dated the third day of January, 1917.

The condition of the above obligation is, that whereas the said William E. Smith hath been duly elected Treasurer of the American

Manufacturing Company and is about to enter upon the duties of the said office, now therefore, if the said William E. Smith shall in all respects faithfully discharge his duty as such Treasurer, then this obligation shall be void, otherwise to be and remain in full force and virtue.

William E. Smith. (L. S.)
George Wood. (L. S.)
Samuel Thompson. (L. S.)

Signed, sealed and delivered
in presence of
James Goodrich.

Form 89. Resolution Authorizing Bond Issue.

Resolved, That for the purpose of paying the existing debts and obligations of the company and its general operating expenses this company issue its first mortgage, twenty year, coupon bonds to the amount of thirty-five thousand dollars (\$35,000), bearing date April 1, 1915, due April 1, 1935, and bearing six per cent. (6) interest per annum, payable semi-annually, one hundred of said bonds being of the denomination of one hundred dollars (\$100) each, numbered from one (1) to one hundred (100) consecutively, and fifty of said bonds being of the denomination of five hundred dollars (\$500) each, numbered from one hundred one (101) to one hundred fifty (150) inclusive, each of said bonds to be made payable to bearer, to be signed by the President and Treasurer and sealed by the seal of the corporation and to be certified by the Augusta Trust Company, Trustee, and each interest coupon attached to bear the fac simile of the signature of the Treasurer of this corporation.

Voted, That the President and Treasurer of this corporation for and in its behalf, are hereby authorized and directed, in the name and behalf of this corporation and under its corporate seal to make, execute and deliver a mortgage or trust deed of all the property and estate of the corporation, whether real, personal or mixed, wherever found and however situated, to the Augusta Trust Company of Augusta, Maine, as Trustee to secure the payment of the principal and interest of said bonds whenever the same shall be due and payable

Voted, That the form of said bonds and coupons there annexed and of the trustee's certificate shall be as follows:

Form 90. Corporation Bonds.

UNITED STATES OF AMERICA

STATE OF MAINE

Number \$100

AMERICAN MANUFACTURING COMPANY.

First Mortgage Six Per Cent. Twenty Year Bond.

The American Manufacturing Company, for value received acknowledging its indebtedness, promises to pay to the bearer the sum

of One Hundred Dollars in Gold Coin of the United States of America, at the office of Augusta Trust Company in the City of Augusta, Maine, on the first day of March, in the year of our Lord one thousand nine hundred and thirty-five, with interest in the meantime from the first day of March, in the year of our Lord one thousand nine hundred and fifteen, at the rate of six per cent. per annum, payable in like Gold Coin semi-annually to the bearer of the coupons hereto annexed, upon surrender thereof respectively at the time and place therein specified, without deduction for any tax or taxes which the company may be required to pay hereon or to retain herefrom under any present or future law of the United States or of the State of Maine or any county or municipality therein, the said company hereby agreeing to pay the same. This bond is one of a series of one hundred and fifty, numbered from one to one hundred and fifty, both inclusive, one hundred of the denomination of One Hundred Dollars each, numbered from one to one hundred, both inclusive, and fifty of the denomination of Five Hundred Dollars each, numbered from one hundred and one to one hundred and fifty, both inclusive, and in all amounting to Thirty-five Thousand Dollars, all of which are of even date herewith, equally secured by a Trust Mortgage dated March 1, 1915, legally recorded under the laws of Maine, duly executed by the said American Manufacturing Company, conveying to the said Augusta Trust Company, all its real and personal estate as described in said Mortgage which is hereby referred to and made a part of this bond.

It is agreed that this bond may be redeemed by the Company at a premium of five per cent. and accrued interest at any interest period after five years from the date hereof in the manner prescribed in said mortgage.

The stockholders of said American Manufacturing Company are each and all expressly exempted from any personal liability by reason of the issue or sale of this bond.

This bond is received and held by the bearer hereof subject to the foregoing provisions and conditions.

This bond shall be valid only when the certificate of the Trustee under the Mortgage that it is one of the bonds specified therein is indorsed hereon.

IN WITNESS WHEREOF, The said American Manufacturing Company has caused its corporate seal to be hereunto affixed, and this instrument to be executed by its President and its Treasurer, and has also caused the several coupons hereunto attached to be authenticated by the fac simile signature of its Treasurer this first day of March, A. D. nineteen hundred and fifteen.

AMERICAN MANUFACTURING COMPANY,

By *A. M. Jones*, President.

Charles D. Smith, Treasurer.

Form 91. Coupon Attached to Bonds.

\$3.00

On the first day of March, A. D. 1918, the American Manufacturing Company will pay the bearer, at the office of Augusta Trust Company, Three Dollars in Gold Coin of the United States of America, being six months' interest on its first mortgage bond, No. 10.

Charles D. Smith, Treasurer.

Form 92. Trustee's Certificate.

The Augusta Trust Company hereby certifies that the within bond is one of the series of bonds specified in the Mortgage Deed of Trust, dated March 1, 1915, referred to herein.

AUGUSTA TRUST COMPANY, TRUSTEE.

By B. J. Smith, Treasurer.

Form 93. Annual Report.

STATE OF MAINE

May 20th, 1916.

To Hon. Byron Boyd, Secretary of State.

In compliance with Section 28, Chapter 51 of the Revised Statutes, the Treasurer of the Wellington Steel Company makes the following return, under oath, of the names of its Directors, President, Treasurer and Clerk with the residence of each, the location of its principal office in this State and the amount of its authorized capital stock.

To be made on or before June 1st of each year.

Names of Directors.

Residences.

Samuel Thompson.....Augusta, Maine.
William Gay.....Augusta, Maine.
James Brown.....Augusta, Maine.

(Give Street and Number.)

President, Samuel Thompson.....No. 25 Washington Street.
Treasurer, James Brown.....No. 346 Tremont Street.
Clerk, William Gay.....No. 25 Washington Street.

Principal office is located at Number 25 Washington Street in the City of Augusta in the County of Kennebec.

Authorized Capital Stock, \$500,000.

*James Brown,
Treasurer.*

State of Maine.
Kennebec, ss.

May 20th, 1916.

Then personally appeared James Brown, Treasurer of the Welling-ton Steel Company, and made oath to the foregoing certificate, that the same is true.

Before me,

Fred King,
Justice of the Peace.

.....

This report should be signed either by the president or treasurer of the company, and be sworn to before a Justice of the Peace. It should be filed on or before the first day of June in each year, and forms the basis on which the state assessors assess the annual franchise tax of the corporation. The amount of capital stock given in the form is the total amount of authorized capital of the company and not the amount which may be issued at the time the report is made.

.....

Form 94. Affidavit to Obtain Exemption from Inheritance Tax.

.....

State of Maine.
County of Kennebec, ss.

John S. Rogers, being duly sworn, deposes and says, that he is twenty-one years of age and upwards and is the treasurer of the American Manufacturing Company, a corporation organized under the laws of the State of Maine on January 21, 1915. That he is familiar with the books and corporate records and has knowledge of the location and value of all the property of said company; that said corporation has not now, nor has it had at any time since its organization, tangible property within the State of Maine exceeding One Thousand Dollars in value.

This affidavit is made pursuant to Section 15, Chapter 118 of the Revised Statutes of Maine, and the Attorney General of the State of Maine is hereby respectfully requested to file a certificate in the office of the Secretary of State setting forth that the American Manufacturing Company has not tangible property within the State of Maine exceeding One Thousand Dollars in value in accordance with Section 15, Chapter 118.

John S. Rogers.

Sworn to before me this 16th day of July, 1916.

Samuel P. Stone,
Notary Public.

{ *Notarial* }
 Seal. }

Form 95. Application for Excuse.

December 5, A. D. 1916.

W. R. Perkins, Assistant Attorney General of Maine.

I, George Wilson, Secretary of the Harvey Machine Company, a corporation duly organized June 10th, A. D. 1904, under the laws of the State of Maine, hereby certify that said corporation has ceased to transact business, and hereby makes application to be excused from further filing its annual returns with the Secretary of State, so long as its franchises remain unused, in accordance with Section 33 of Chapter 51 of the Revised Statutes of Maine.

George Wilson.

State of Maine.
Kennebec, ss.

December 6, 1916.

Then personally appeared the above named George Wilson and made oath to the truth of the statements contained in the above application by him subscribed.

Before me,

Fred King,

Justice of the Peace.

Form 96. Excuse.

STATE OF MAINE

Office of Assistant Attorney General.

Augusta, Maine, Dec. 24, 1916.

To Hon. Byron Boyd, Secretary of State of Maine:

I, W. R. Perkins, Assistant Attorney General of Maine, hereby certify that I have received satisfactory proof that the Harvey Machine Company, a corporation organized under the laws of the State of Maine, has ceased to transact business, and is, therefore, under Chapter 51, Section 33, R. S. of Maine, excused from filing annual returns with Secretary of State, as now required by law, so long as its franchises remain unused.

Yours respectfully,

W. R. Perkins,

Assistant Attorney General.

The above excuse will relieve the corporation from making further annual returns, and consequently from paying any franchise tax which may be assessed thereafter. It will not, however, relieve the company from payment of franchise tax assessed previous to its date.

Form 97. Resolution to Dissolve Corporation.

.....

Whereas, This corporation has ceased to do the business for which it was organized, and whereas all its indebtedness has been paid,

Resolved, That it is for the best interest of the stockholders that this corporation should be dissolved, its business terminated and its assets distributed as provided by law.

Resolved, That the President be authorized and directed to employ a competent attorney or attorneys who shall prepare and file in the Supreme Judicial Court for the County of Kennebec and State of Maine, a bill in equity, in behalf of the President of this corporation, praying for the dissolution of this corporation, and shall prosecute same to final judgment.

.....

The call for the meeting at which this action is taken should contain some such statement as the following: "For the purpose of taking action upon the proposition to dissolve said corporation, wind up its business, and dispose of its assets."

Form 98. Bill in Equity for Dissolution.

.....

STATE OF MAINE.

Oxford, ss.

Supreme Judicial Court,

In Equity.

July 12, 1916.

C. B. Smith

vs.

Jamieson Piano Co.

C. B. Smith, of Dixfield in the County of Oxford and State of Maine, complains against the Jamieson Piano Company, a corporation duly existing by law and located at the town of Dixfield, Oxford County, and says:

- (1) The plaintiff is Clerk of the said Jamieson Piano Company.
- (2) At a meeting of the stockholders of said corporation, legally called therefor, and held at said Dixfield on the twelfth day of July, 1916, the said stockholders voted to dissolve said corporation.
- (3) There are no existing assets of said corporation to be distributed, and no liabilities.

Therefore plaintiff prays:

- (1) That said defendant corporation may be dissolved and terminated.
- (2) That the plaintiff may have such other and further relief as the need of the case may require.

(3) And that such notice of this bill may be given to the defendant corporation as the Court may see fit to issue.

Jones and Smith, *Plaintiff's Solicitors.*

C. B. Smith.

State of Maine.

Oxford, ss.

July 12, 1916.

Then personally appeared C. B. Smith and made oath that he has read the above bill and knows the contents thereof, and that the same is true of his own knowledge except the matters stated to be on information and belief; that as to those matters he believes them to be true.

Before me,

Howard Fielding,

Justice of the Peace.

.....

If the corporation has assets requiring distribution the bill in equity should contain a statement thereof, and the court will appoint a receiver or receivers to convert the assets into cash and distribute them, otherwise a decree dissolving the corporation will be issued as a matter of course on such bill. If the corporation has assets requiring distribution in place of the third paragraph insert the following:

.....

Form 99. Bill in Equity where there are Assets to be Distributed.

.....

The existing assets of said corporation amount to about Seven Thousand Dollars and its liabilities to about Fifteen Thousand Dollars.

.....

A new prayer should also be inserted between number 1 and number 2, as follows:

That a receiver may be appointed to collect and take possession of the assets of said corporation, convert the same into money by sale, and apply the proceeds to the payment of the debts of the corporation and the final settlement of all its affairs.

.....

The court will order notice to be given defendant corporation, usually by publication in some newspaper published in the county where the corporation is located, once a week

for three successive weeks, the last publication to be fourteen days at least before the return day thereof. If there is no appearance for defendant on the return day the bill will be ordered taken *pro confesso* within ten days thereafter, and final decree of dissolution will then issue if the decree is not revoked within ten days after it is filed. As a matter of common prudence all corporations ceasing to transact business should procure a decree of dissolution.

.....

Form 100. Decree of Dissolution when Receiver is Appointed.

.....

STATE OF MAINE.

Oxford, ss.

Supreme Judicial Court,

In Equity.

C. B. Smith

vs.

Jamieson Piano Co.

Decree appointing Receiver

This cause came on to be heard this day, and the plaintiff's bill having been taken *pro confesso* by decree of this court on the first day of January, 1916 for want of appearance and ten days having elapsed since the entering of said decree without motion to reopen the same, thereupon, upon consideration thereof,

It is Ordered, Adjudged and Decreed, as follows:

That the defendant corporation, known as the Jamieson Piano Company be and hereby is dissolved as from the date of this decree* and that C. H. Williams of Augusta, Maine, be and hereby is appointed receiver to collect by suit or otherwise, all outstanding debts or claims due said corporation, and to take possession of all effects, property and assets of every name and nature belonging to said corporation upon filing a bond with the clerk of this court in the sum of \$14,000 with sufficient sureties to be approved by this court, conditioned for the faithful performance of his duties as such receiver and the officers, agents and servants of the defendant corporation are hereby ordered to deliver over to said receiver all such effects and property aforesaid belonging to said corporation or pertaining to its business; and the said receiver is hereby authorized and directed to sell all of said corporate property at public auction or private sale subject to the discretion and approval of this court, and convert the same into cash and apply the proceeds to the payment of the debts of said corporation and report his doings in the premises from time to time and render a final account thereof upon the winding up of the affairs of said corporation and the completion of his duties; and let the costs

of these proceedings, taxed by the clerk as between solicitor and client, be paid out of the fund in the hands of said trustee.

December 15, 1916.

William R. Boothby,

Justice Supreme Judicial Court.

If no receiver is to be appointed and there are no assets or liabilities the first part of the decree only may be used down to *.

Form 101. Appointment of Attorney for Foreign Corporations.

Know all Men by these Presents:

That the United Motor Company, a corporation located in the city of Chicago, in the State of Illinois and established under the laws of said State, desiring to transact business in the State of Maine in conformity with the laws thereof, hereby constitutes and appoints James B. Smith of Augusta in the County of Kennebec and State of Maine, to be the true and lawful Attorney of said Corporation, in and for the said state, upon whom all lawful processes in any action or proceeding against said Corporation in said State may be served in like manner and with the same effect as if said Corporation existed therein. And the said Corporation hereby stipulates and agrees that any lawful process against said Corporation, which is served on its said Attorney, shall be of the same legal force and validity as if served on said Corporation.

This appointment and the authority of said Attorney shall continue in force so long as any liability remains outstanding against said Corporation in said State.

In Witness Whereof, the aforesaid Corporation, pursuant to a vote of its Directors, duly passed on the first day of January A. D. 1916 (a certified copy whereof is hereunto annexed,) have caused these presents to be subscribed by its President and countersigned by its Clerk or Secretary, and the corporate seal of said Corporation to be hereunto affixed, this first day of January in the year of our Lord One Thousand Nine Hundred and Sixteen.

William H. Smith, *President.*

James R. Brown, *Clerk (or Secretary.)*

{ *Corporate Seal* }

STATE OF MAINE.

Kennebec, ss.

On this first day of January, A. D. 1916 before me, a Notary Public, duly appointed and qualified, personally appeared the before-named William H. Smith, President, and James R. Brown, Clerk, (or

Secretary) of the United Motor Company and severally acknowledged the execution of the foregoing instrument by them subscribed, and they severally made oath that they are respectively the afore-described officers of said Corporation; that the seal affixed to said instrument is its true and proper corporate seal; and that they subscribed said instrument, and said corporate seal was affixed by virtue of authority duly conferred by said Corporation.

Witness my hand and official seal at Augusta in the State and county aforesaid, the day and year above written.

Charles J. Hamilton,

Notary Public.

{ *Notarial* }
 Seal.

*If out of Maine, before a Commissioner for Maine, or Notary Public; if within Maine, before a Notary Public or Justice of the Peace.

(COPY)

At a meeting of the Directors of the United Motor Company, a Corporation established under the laws of the State of Maine, duly held on the first day of January, A. D. 1916, a quorum being present, the following Vote was adopted:—

"Voted, that this Corporation hereby appoints Albert A. Parsons of Augusta in the County of Kennebec and State of Maine, to be its true and lawful Attorney, in and for said State, upon whom all lawful processes in any action or proceeding against this corporation in this State may be served, in like manner and with the same effect as if this Corporation existed therein. And this Corporation hereby stipulates and agrees that any lawful process against it, which is served on its said Attorney, shall be of the same legal force and validity as if served on this Corporation. This appointment, and the authority of said Attorney, shall continue in force so long as any liability remains outstanding against this Corporation in said state; and the President and Clerk or Secretary, are hereby authorized to execute, in the name of the Corporation, and under its corporate seal, a certificate of authority or power of attorney to the said Albert A. Parsons in conformity to this Vote and the laws of said State."

I Hereby Certify, that the above is a true copy of the Vote of the Directors of this Corporation, authorizing the appointment of an Attorney for the State of Maine, as recorded by me.

James R. Brown,

Clerk (or Secretary.)

Form 102. Application of Foreign Corporation. (Certificate.)

STATE OF MAINE

We, William H. Smith, President, and Harry B. Jordan, Treasurer or Clerk, of United Motor Company, a corporation organized under the laws of Maine, in compliance with the provisions of Section 107,

Chapter 51, Revised Statutes of Maine, do hereby certify as follows concerning said corporation:—

1. That the name of said corporation is United Motor Company
2. That the location of its principal office is Augusta, Maine.
3. That the names and addresses of its officers are as follows:—

<i>Name</i>	<i>Address</i>
President, William H. Smith,	Augusta, Maine.
Treasurer, Harry B. Jordan	Augusta, Maine.
Clerk or Secretary, James R. Brown.....	Augusta, Maine.

Directors, William H. Smith.
 Harry B. Jordan.
 James R. Brown.

4. That the date of its annual meeting for election of officers is 1st Tuesday in January.
5. That the amount of its capital stock authorized is one million dollars.
 The number of shares is ten thousand.
 The amount of capital stock issued is, Preferred, five hundred dollars; common, five hundred dollars.
 The par value of its shares is, Preferred, one hundred dollars; Common, one hundred dollars.
 The amount paid in thereon to the treasurer is, Preferred, nothing; Common, nothing.
6. Usual place of business in this State, Augusta, Maine.
7. To whom and where notice and copies of legal processes shall be addressed, James R. Brown, Augusta, Maine.

IN WITNESS WHEREOF, we have hereunto signed our names, this first day of January, in the year of our Lord nineteen hundred and sixteen.

State of Maine.

Kennebec, ss.

January 1, 1916.

Then personally appeared the above named William H. Smith, Harry B. Jordan and James R. Brown and severally made oath that the foregoing certificate, by them subscribed, is true to the best of their knowledge and belief.

Before me,

Charles J. Hamilton,

Notary Public.

{ *Notarial* }
 { *Seal.* }

If out of Maine, oath before a Commissioner for Maine, or Notary Public; if within Maine, before a Notary Public or Justice of the Peace.

PART III.—CORPORATION LAWS
OF THE
STATE OF MAINE RELATING TO BUSINESS COR-
PORATIONS

Revised to January 1, 1917.

CONSTITUTIONAL PROVISION.

Corporations shall be formed under general laws, and shall not be created by special acts of the Legislature, except for municipal purposes, and in cases where the objects of the corporation cannot otherwise be attained; and, however formed, they shall forever be subject to the general laws of the State. [Constitution of Maine, Art. IV, Pt. 3, Sec. 14.] [83 Me., 440; 91 Me., 194.]

GENERAL RULES.

XXVIII. Acts of incorporation shall be regarded in legal proceedings as public acts, and be in force on the date of their approval. All acts of incorporation granted since January one, eighteen hundred and ninety-three, become null and void in two years from the day when the same take effect, unless such corporations shall have organized and commenced actual business under their charters. [97 Me., 559.]

XXIX. The organization of any corporation under any general law of the state becomes null and void within two years from the day when its certificate of incorporation has been filed in the office of the secretary of state, unless such corporation shall have commenced actual business under its organization. [R. S., Ch 1, Sec. 6.]

REVISED STATUTES OF MAINE, 1916.

CHAPTER 51.

ORGANIZATION—CERTIFICATE THEREOF—FEES AT ORGANIZATION.

Section 1. **Scope of Chapter 51.***—This chapter applies to all corporations organized by special acts of the legislature or under the general laws of the state, except so far as it is inconsistent with such special acts or with public statutes, concerning particular classes of corporations.

[39 Me., 37; 58 Me., 20; 113 Me., 536.]

Sec. 2. **Right of alteration and repeal reserved.**—Acts of incorporation, passed since March seventeen, eighteen hundred and thirty-one, may be amended, altered or repealed by the legislature, as if express provision therefor were made in them, unless they contain an express limitation; but this section shall not deprive the courts of any power which they have at common law over a corporation or its officers.

[16 Me., 231; 23 Me., 319; 60 Me., 174; 63 Me., 274; 66 Me., 504, 508; 69 Me., 49; 96 Me., 258; 97 Me., 207, 592.]

Sec. 3. **Certificate of organization of specially chartered corporations.**—Before commencing business, the president, treasurer and a majority of the directors of any corporation chartered by special act of the legislature, shall prepare a certificate setting forth the date of approval of its charter, the name and purposes of the corporation, the amount of capital stock, the amount already paid in, the par value of the shares, the names and residences of the owners, the name of the county where it is located, the number and names of the directors, and the name and residence of the clerk, and shall sign and make oath to it. Such certificate shall be recorded in the registry of deeds in the

**The black head lines were inserted by the author for convenience. They do not appear in this form in the statutes.*

county where its principal office is to be located, in a book kept for that purpose, and a copy thereof, certified by such register, shall be filed in the office of the secretary of state, who shall enter the date of filing thereon and on the original certificate to be kept by the corporation, and shall record said copy in a book kept for that purpose. From the time of filing such certificate in the secretary of state's office, the stockholders of said corporation, their successors and assigns, shall be a corporation.

Sec. 4. Duties payable by corporations specially chartered.—The certificate mentioned in the preceding section shall not be received and filed by the secretary of state except upon the payment to him of the sum of fifteen dollars, if the capital stock does not exceed five thousand dollars; twenty-five dollars if the capital stock exceeds five thousand dollars and does not exceed ten thousand dollars; seventy-five dollars if the capital stock exceeds ten thousand dollars and does not exceed fifty thousand dollars; one hundred and twenty-five dollars if the capital stock exceeds fifty thousand dollars and does not exceed one hundred thousand dollars; sixty dollars upon every one hundred thousand dollars or fraction thereof in excess of one hundred thousand dollars, if the capital stock exceeds one hundred thousand dollars, which sum is to be paid by the secretary of state to the treasurer of state for the use of the state, *provided*, that the provisions of this section shall not apply to corporations chartered for charitable and benevolent purposes.

Sec. 5. Must file certificate before doing business.—No corporation created by special act of the legislature, municipal corporations excepted, shall carry on any business whatsoever, before filing in the office of the secretary of state the certificate of organization provided by section three of this chapter. Whoever, whether named in the act of the legislature or not, conducts and carries on any business whatsoever in the name of such corporation before said certificate is filed shall be personally and individually liable for all contracts and debts of said corporation contracted prior to the filing of said certificate. The provisions of this section shall apply to all individuals granted special rights and privileges by act of the legislature.

Sec. 6. Duties payable by quasi-public corporations.—No certificate of organization of any corporation for banking, insurance, construction and operation of railroads, or aiding in the construction thereof, the business of trust companies, or corporations intended to derive a profit from the loan or use of money, safe deposit companies, renting of safes and burglar and fire proof vaults, telegraph and telephone companies, electric or gas light companies, street railroad com-

panies, water companies, or any corporation authorized to exercise the right of eminent domain, shall be received and filed by the secretary of state except upon payment to him of twenty-five dollars, if the capital stock does not exceed five thousand dollars; fifty dollars if the capital stock exceeds five thousand dollars and does not exceed ten thousand dollars; one hundred dollars if the capital stock exceeds ten thousand dollars and does not exceed fifty thousand dollars; two hundred dollars if the capital stock exceeds fifty thousand dollars, and does not exceed one hundred thousand dollars; seventy-five dollars upon every one hundred thousand dollars or fraction thereof in excess of one hundred thousand dollars, if the capital stock exceeds one hundred thousand dollars, which sum is to be paid by the secretary of state to the treasurer of state for the use of the state.

[Note—This section has no application to railroad, telegraph, telephone, gas or electrical companies organized under the provisions of section 7 below, to do business only in other states and jurisdictions.]

CORPORATIONS WHICH MAY BE ORGANIZED UNDER THE "GENERAL LAW," SO-CALLED.

Sec. 7. Method of organization.—Three or more persons may associate themselves together by written articles of agreement, for the purpose of forming a corporation to carry on any lawful business anywhere, including corporations for manufacturing, mechanical, mining or quarrying business and also corporations whose purpose is the carriage of passengers or freight, or both, upon the high seas, or from port or ports in this state to a foreign port or ports, or to a port or ports in other states, or the carriage of freight or passengers, or both, upon any waters where such corporations may navigate, and excepting corporations for banking, insurance, the construction and operation of railroads or aiding in the construction thereof, and the business of savings banks, trust companies or corporations intended to derive profit from the loan or use of money, and safe deposit companies, including the renting of safes in burglar-proof and fire-proof vaults; but corporations may also be formed hereunder to exercise the following corporate purposes in other states and jurisdictions, namely: the construction and operation of railroads or aiding in the construction thereof, telegraph or telephone companies, and gas or electrical companies, and in all such cases the articles of agreement and certificate of organization shall state that such business is to be carried on only in states and jurisdictions when and where permissible under the laws thereof, and such corporations heretofore organized for the transaction of such business in other states or jurisdictions, if otherwise legally organized and now existing, are hereby declared to be corporations under the laws of this state.

[86 Me., 316.]

Sec. 8. First meeting of associates.—Their first meeting shall be called by one or more of the signers of said articles, by giving notice thereof, stating the time, place and purposes of the meeting to each signer, in writing, or by publishing it in some newspaper printed in the county, at least fourteen days prior to the time appointed therefor. If all of the signers of said articles shall in writing waive notice and fix a time and place of such meeting, no notice or publication shall be necessary. At such meeting they may organize into a corporation, adopt a corporate name, define the purposes of the corporation, fix the amount of the capital stock, which shall not be less than one thousand dollars, divide it into shares and elect not less than three directors, a president, a clerk, treasurer and any other necessary officers, and may adopt a code of by-laws.

[61 Me., 356; 64 Me., 381; 70 Me., 146.]

Sec. 9. Certificate of organization, and fees, under general law.—Before commencing business, the president, treasurer and majority of the directors shall prepare a certificate setting forth the name and purposes of the corporation, the amount of capital stock, the amount already paid in, the par value of the shares, the names and residences of the owners, the name of the county where it is located, and the number and names of the directors, and the name and residence of the clerk, and shall sign and make oath to it; and after it has been examined by the attorney general, and been by him certified to be properly drawn and signed and to be conformable to the constitution and laws, it shall be recorded in the registry of deeds in the county where said corporation is located, in a book kept for that purpose, and within sixty days after the day of the meeting at which such corporation is organized, a copy thereof certified by such register shall be filed in the secretary of state's office, who shall enter the date of filing thereon, and on the original certificate to be kept by the corporation, and shall record said copy in a book kept for that purpose.

The oath to said certificate may be made outside the state before a notary public, or a commissioner appointed by the governor to take acknowledgments of deeds in other states, by any subscriber to said certificate who was actually present in the state at the meeting for the organization of the corporation. All certificates verified prior to the fourth day of July, nineteen hundred and fifteen, outside the state before a notary public or such commissioner shall be deemed to comply with this section. Before said certificate is filed in the office of the secretary of state, when the amount of capital stock does not exceed ten thousand dollars, such corporation shall pay to the treasurer of state for the use of the state the sum of ten dollars; when the amount of the capital stock exceeds ten thousand dollars and

does not exceed five hundred thousand dollars, it shall pay to the treasurer of state for the use of the state, the sum of fifty dollars; when the amount of the capital stock exceeds five hundred thousand dollars, it shall pay to the treasurer of state for the use of the state ten dollars for each one hundred thousand dollars of the capital stock; and the treasurer's receipt for said sum shall be filed with the secretary of state as a condition precedent, before he shall be authorized to receive said certificate for filing.

[61 Me., 356; 64 Me., 381; 70 Me., 146.]

[Note—The other fees payable at organization are as follows: Attorney General, for approval of certificate of organization, \$5.00; Register of Deeds, for recording certificate, \$5.00; Secretary of State, for receiving, filing and recording copy of the certificate of organization, \$5.00.]

Sec. 10. Certain organizations validated.—Any corporation organized hereunder before the fifteenth day of March, eighteen hundred and ninety-three, which caused the certificate to be recorded in the registry of deeds of the county in which such corporation is described in said certificate to be located, shall be deemed to have complied with the requirements of the preceding section.

Sec. 11. When corporate organization is complete.—From the time of filing the copy of such certificate in the secretary of state's office, the signers of said articles and their successors and assigns shall be a corporation, the same as if incorporated by a special act, with all the rights and powers, and subject to all the duties, obligations and liabilities provided by this chapter.

[61 Me., 356; 64 Me., 381; 70 Me., 146.]

MEETINGS.

Sec. 12. First meeting of specially chartered corporations. The first meeting of any corporation chartered by special act of the legislature unless otherwise provided, shall be called by a notice signed by some person named in the act of incorporation, setting forth the time, place and purpose of the meeting, a copy of which shall be delivered to each member, or published in a newspaper in the county, if any, otherwise in the state paper seven days before the meeting; but the organization of any existing corporation made in accordance with any provision of this chapter is valid.

[27 Me., 519; 38 Me., 345; 72 Me., 296.]

Sec. 13. When Justice of Peace may call meeting.—When a meeting of any corporation cannot be otherwise called, three members of the corporation may make written application to a justice of the peace where it is established, if local, or if not, where it is desired

to hold the meeting, who may issue his warrant to either of such members, directing him to call a meeting by giving the notice required in the preceding section. When the law requires a notice to be published in some newspaper, or posted in some public place, the justice shall designate in his warrant the newspaper or place.

Sec. 14. Who may preside at such meeting.—When a meeting is called by a justice of the peace, he, or the person to whom his warrant was directed, may call the meeting to order and preside therein, until a clerk is chosen and qualified, if there is no officer present whose duty it is to preside. The person presiding is not responsible for an error in judgment in receiving or rejecting the vote of a person claiming to be a member.

Sec. 15. Elections not held at regular time—tenure of office.—When a corporation fails to hold its annual meeting on the day appointed, or fails to elect officers at such meeting, the officers of the preceding year continue in the exercise of their duties, and their acts are legal, until other officers are chosen and qualified in their stead. When, upon due notice given, officers are regularly elected on any other day than that of the annual meeting, they shall hold their offices and perform their duties as if chosen on that day, unless a majority of the corporate members file with the clerk, within six months after such election, written objections thereto, and their acts shall be considered legal, until others are chosen and qualified in their stead.

[30 Me., 550; 56 Me., 323.]

Sec. 16. Acts of officers so chosen legal.—When such a notice is filed, the clerk shall call a meeting of the corporation, at such time and place as he appoints, and give the notice required for an annual meeting, stating in it the fact that objections have been filed, and the purpose of the meeting; and officers elected at such meeting shall hold their offices, and their acts shall be considered legal, until other officers are chosen and qualified in their stead.

Sec. 17. Unanimous consent validates meeting.—When all the members of a corporation are present in person or by proxy at a meeting and sign a written consent on the record thereof, such meeting is legal.

Sec. 18. Proxies and powers of attorney.—Shareholders may be represented by proxies granted not more than thirty days before the meeting which shall be named therein; they are not valid after a final adjournment thereof. They may be represented by a general power of attorney, produced at the meeting, until it is revoked. Shares hypothecated to the corporation shall not be represented. No person

can give, by right of representation, a greater number of votes than is allowed to any one by the charter or by-laws.

Sec. 19. Pledgeor of stock has voting power.—After the owner of stock in a corporation has transferred, mortgaged or in any way pledged the same to another for security merely, and it so appears in such transfer, mortgage or pledge, and on the books of the corporation, such owner continues to have the right to vote upon such stock at all meetings of the stockholders until his right of redemption ceases.

OFFICERS.

Sec. 20. Corporate officers—duties —powers.—Corporations shall have a president, directors, clerk, treasurer and any other desirable officers. Such officers shall be chosen annually, and shall continue in office until others are chosen and qualified in their stead. There shall not be less than three directors, one of whom shall be by them elected president. Directors must be and remain stockholders, except that a member of another corporation, which owns stock and has a right to vote thereon, may be a director. The treasurer shall give bond for the faithful discharge of his duties, in such sum, and with such sureties, as are required. The clerk shall be sworn, and shall record all votes of the corporation in a book kept for that purpose; nothing herein shall prohibit corporations from providing by their by-laws for the division of their directors into classes and their election for a longer term than one year. After the certificate of organization required by law is filed in the office of the secretary of state, directors of all corporations not charged with the performance of any public duty within the state may hold meetings without the state and there transact business and perform all corporate acts not expressly required by statute to be performed within the state. Directors of such corporations may act through committees whose powers shall be defined in the by-laws.

[30 Me., 550; 41 Me., 87.]

Sec. 21. Deadlocks in election of directors avoided.—If any corporation organized under the general laws of this state shall fail to elect directors within six months after the time provided in its by-laws for the annual meeting the supreme judicial court shall have jurisdiction in equity, upon application by any one or more of its stockholders holding at least fifty per cent. of the capital stock issued to appoint a board of directors for such corporation not exceeding in membership the number authorized by the by-laws. Such appoint-

ments may be made from among the stockholders or otherwise as the court may see fit. The application shall be made by petition filed in the county where such corporation is located and shall be brought in behalf of all stockholders desiring to be joined therein; such notice shall be given to the corporation and its stockholders as the court may direct. Such appointees of the court shall have the same rights, powers and duties and the same tenure of office as directors duly elected by the stockholders at the annual meeting held at the time prescribed therefor in the by-laws, next prior to the date of the court's appointment would have had.

Sec. 22. Clerk's office—records.—All corporations, existing by virtue of the laws of this state, shall have a clerk who is a resident of this state, and shall keep, at some fixed place within the state, a clerk's office where shall be kept their records and a book showing a true and complete list of all stockholders, their residences and the amount of stock held by each; and such book, or a duly proved copy thereof, shall be competent evidence in any court of this state to prove who are stockholders in such corporation and the amount of stock held by each stockholder. Such records and stock book shall be open at all reasonable hours to the inspection of persons interested, who may take copies and minutes therefrom of such parts as concern their interests, and have them produced in court on trial of an action in which they are interested. The above provisions as to list of stockholders shall not apply to any corporation doing business in this state and having a treasurer's office at some fixed place in the state where a stock book is kept giving the names, residences and amount of stock of each stockholder.

[109 Me., 409; 111 Me., 386.]

Sec. 23. Preventing access to certain records punished.—Any officer or member of a corporation, who prevents access to and use of the records and books as provided in the preceding section, is liable for all damages occasioned thereby, in an action on the case.

[77 Me., 495.]

Sec. 24. Certificate of election of clerk.—Whenever there is a change in the office of clerk of a corporation, the clerk shall, within twenty days after the acceptance of the office file a certificate of his election in the registry of deeds in the county or district where the corporation is located, or where it has a place of business or a general agent; and an attested copy of such certificate shall be sufficient evidence that he is clerk, for service of process upon the corporation, until another certificate has been filed.

Sec. 25. Resignation of clerk.—The clerk of any corporation may resign his office as clerk by filing his resignation with the register of deeds in the county where the certificate of his election was filed; if no such certificate of election was filed, then his resignation may be filed with the register of deeds in the county where such certificate of election, ought according to law to have been filed; said resignation shall take effect from and after the time of the receipt of the same by such register of deeds.

Sec. 26. Returns to assessors.—Cashiers of banks, treasurers of trust and banking and safe deposit companies and clerks or treasurers of other corporations shall ascertain the residences of all stockholders in either; and no dividend shall be paid to any stockholder, whose residence, for the time being, is not entered on the books thereof; and the cashiers of banks and clerks or treasurers of all corporations holding property liable to be taxed, shall, by the eighth day of April annually, return under oath, to the assessors of each town, in which any of its stockholders reside, the names of such stockholders, the amount of stock owned by them on the first day of such April, and the amount of stock paid into such corporations, and also the value of the real estate, vaults and safe deposit plant, owned by any bank, or trust and banking or safe deposit company which is taxed as other real estate is taxed in the town in which it is located and the amount for which it is valued by the assessors of such municipality for the year previous, and such return shall contain in the body thereof, or by note annexed thereto, an abstract of section thirty-three of chapter ten; and said cashiers of banks, treasurers of trust and banking and safe deposit companies, and clerks or treasurers of such other corporations shall make like returns to the assessors of the town where such bank, company or other corporation is located or transacts its ordinary business, of all the stock in such bank, company or other corporation not returned to the assessors of other towns in the state. Such returns shall be the basis of taxation on such property, deducting the assessed value of the real estate, vaults and safe deposit plant of any bank, trust and banking or safe deposit company as herein provided.

[65 Me., 379; 82 Me., 189.]

[**Note**—This section does not impose the duty of making returns upon corporations whose assets and business are outside of Maine.]

Sec. 27. Bank cashiers to return lists of stockholders.—Such cashiers shall, between the first day of November and the eighth day of December, annually, make return to the secretary of state of the names of all stockholders, their residences, the amount of stock owned by each and the whole amount of stock paid in on said first day of November.

Sec. 28. Return on which franchise tax is based.—Every corporation incorporated under the laws of this state, excepting religious, charitable, educational and benevolent corporations, and excepting such corporations as may be organized under chapter sixty-two, and such corporations as are liable to a franchise tax other than the tax provided for in section eighteen of chapter nine, and such corporations as have been or may hereafter be excused from filing annual returns under the provisions of section thirty-three of this chapter, so long as their franchises remain unused, shall on or before the first day of June, annually, make a return to the secretary of state, signed by its president or treasurer, verified under oath, containing the names of its directors, president, treasurer and clerk, with the residence of each, the location of its principal office in this state, and the amount of its authorized capital stock; and for this purpose the secretary of state shall furnish blanks in proper form and safely keep in his office all such returns.

Sec. 29. Mailing of same—penalty for neglect.—A deposit of the return required in the three preceding sections in a post office, postage paid, properly directed, is a compliance therewith. For the neglect or refusal of its officer to make such return, the corporation forfeits five hundred dollars, to be recovered in an action of debt, to be prosecuted in the name of the state by the attorney general.

Sec. 30. Enforcement of penalties.—Whenever any corporation or its officers neglect to make to the secretary of state any return required by law, the secretary of state shall forthwith notify the attorney general, who shall proceed at once, by action of debt in the name of the state, to enforce the penalties therefor, and shall make itemized return thereof in his annual report. The secretary of state, on or before the first day of July, annually, shall furnish the attorney general with a statement showing which of said corporations, if any, have failed to comply with the preceding section, with such other memoranda from his office as will aid the attorney general in obtaining service upon such delinquent corporation. In addition to said penalties, the following costs shall be recovered in behalf of the state against said corporation, to wit: for the attorney general, for the writ, an attorney fee, and travel and attendance at court not exceeding two terms; and for the state, such other costs as are legally taxable in actions at law. Such action may be brought in any county.

Sec. 31. Discontinuance of suit.—If within thirty days from the commencement of an action under section twenty-nine such corporation makes to the secretary of state the returns required by law, he shall forthwith notify the attorney general, who shall discontinue such suit upon payment of the costs already accrued.

Sec. 32. Penalty for neglect to publish statements.—If any officer of a corporation, charged by law with the duty of making and causing to be published any statement in regard to such corporation, neglects to do so, such officer, in addition to penalties already provided, forfeits five hundred dollars to the prosecutor, to be recovered by action of debt, or action on the case.

[**Note**—No statements, except that specified in Section 28 above, are required from corporations organized under the "general law," i. e., Section 7 above.]

Sec. 33. Excuse from taxation during non-user of franchise.—The attorney general, upon application by any corporation, and satisfactory proof that it has ceased to transact business, shall file a certificate of the fact with the secretary of state, and shall give a duplicate certificate to the corporation; and thereupon such corporation shall be excused from filing annual returns with the secretary of state.

Sec. 34. Dividends not to reduce capital or debts due.—Dividends of profit may be made by the directors, but the capital or the debts due shall not thereby be reduced, until all debts due from the corporation are paid. Any officer or member, who votes or aids to make a dividend in violation hereof shall be fined not exceeding two thousand dollars, and imprisoned less than one year; and all sums received for such dividends may be recovered by any creditor of the corporation in an action on the case.

CAPITAL STOCK AND TRANSFER OF SHARES.

Sec. 35. Capital of corporations specially chartered fixed and divided.—The capital of corporations incorporated by special act of the legislature shall be fixed within the limits of the charter and divided into shares; and the names of owners, and the number of shares owned by each, shall be entered of record at the first meeting. The capital may be subsequently increased to the amount allowed by the charter, by adding to the number of shares.

Sec. 36. Transfer of shares.—When the capital of a corporation is divided into shares, and certificates thereof are issued, they may be transferred by indorsement and delivery. The delivery of a certificate of stock of a corporation to a bona fide purchaser or pledgee for value, together with a written transfer of the same or a written power of attorney to sell, assign and transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title against all parties. Certificates of shares with the seal of the

corporation affixed, shall be issued to those entitled to them by transfer or otherwise, signed by the president or vice-president, and by the cashier, secretary, clerk or treasurer, or assistant treasurer. Neither shall sign blanks and leave them for use by the other, nor sign them without knowledge of the apparent title of the person to whom they are issued, unless the corporation has a duly authorized transfer agent whose duty it is to countersign each certificate issued. In case of the absence or disability of either of said officers, the signature of a majority of the directors in his stead is sufficient.

[20 Me., 305; 49 Me., 317; 68 Me., 68; 106 Me., 479.]

Sec. 37. Transfer does not bind corporation until recorded.—No transfer shall affect the right of the corporation to pay any dividend due upon the stock, or to treat the holder of record as the holder in fact, until such transfer is recorded upon the books of the corporation or a new certificate is issued to the person to whom it has been so transferred.

[106 Me., 479.]

Sec. 38. Par value of shares may be changed.—Any corporation organized under this chapter may change the par value of its shares at a meeting of the stockholders called for the purpose by a vote representing a majority of the stock issued, and a certificate thereof signed by the president or clerk shall be filed in the office of the secretary of state in the same manner as provided by law for changes in charter or certificate of organization.

Sec. 39. Assessments on unpaid stock.—Assessments, not exceeding the amount originally limited for a share, may be made on all shares, subscribed and not paid for, to be paid to the treasurer, in such instalments and at such times as are ordered. If a stockholder neglects to pay such assessments on his shares for thirty days, the treasurer may sell at public auction a sufficient number of them to pay the same with incidental charges.

Sec. 40. Notice of sale for non-payment of assessments.—The treasurer, before the sale, shall give notice of the time and place thereof, of the number of shares on which the assessment is due and of the amount due on each share, in a newspaper printed in the town, if any, if not, in the county where the office of the clerk of such corporation is established, otherwise in the state paper, three weeks successively; and such notice shall likewise be given in one other leading newspaper printed in the state; the notice in said papers shall, in all cases, be printed on the financial pages of said papers. Written or printed notice as aforesaid shall also be given to each stockholder of

record in the corporation, at his last known address at least ten days before the sale. At said sale the treasurer of the corporation shall announce the market price of the stock to be sold, or if the stock has no market price, the treasurer shall make a statement of the financial condition of the company, showing what the stock is worth. If no bids are received at said sale for said stock, the treasurer of the corporation shall bid in said stock in behalf of the corporation, to be again sold by the corporation as the directors may vote; provided, however, that no rights of creditors of the corporation shall be thereby affected and such stock, so long as held by the corporation, shall have no voting power; and the treasurer's certificate of the sale of such shares, recorded as other transfers, passes the title to the purchaser.

Sec. 41. Increasing capital—changing number of directors—fees.—If the stockholders of any corporation created by special charter and not charged with the performance of any public duty, or organized under the general laws of the state, find that the amount of its capital stock is insufficient for the purposes for which said corporation is organized, or that the number of directors is inconvenient for the transaction of its business, the stockholders may by a vote representing a majority of the stock issued, increase the amount of its capital stock to any amount, and may change the number of directors in like manner, and the corporation shall file a certificate thereof with the secretary of state within ten days thereafter, and thereupon said vote shall take effect. When the capital stock is increased from ten thousand dollars or less to not exceeding five hundred thousand dollars, the corporation shall pay to the treasurer of state for the use of the state the sum of forty dollars. When the capital stock is increased to any amount exceeding five hundred thousand dollars, it shall pay to the treasurer of state for the use of the state the sum of ten dollars for each one hundred thousand dollars of such increase, and the treasurer's receipt for the same shall be filed with the secretary of state before he shall be authorized to receive any certificate of any increase of capital stock.

Sec. 42. Duties for increase of capital stock of other corporations.—Whenever any corporation created by special act of the legislature and charged with the performance of any public duty, or organized for any of the purposes enumerated in section six which are not subject to fees of a like kind to those herein provided, increases its capital stock, it shall pay to the treasurer of state, for the use of the state, the following fees.

When the capital stock is increased from five thousand dollars or less to not exceeding ten thousand dollars, the corporation shall pay the sum of twenty-five dollars. When the capital stock is increased

from ten thousand dollars to not exceeding fifty thousand dollars, it shall pay the sum of fifty dollars. When the capital stock is increased from fifty thousand dollars to not exceeding one hundred thousand dollars, it shall pay the sum of one hundred dollars. When the capital stock is increased to any amount exceeding one hundred thousand dollars, it shall pay seventy-five dollars upon every one hundred thousand dollars, or fraction thereof, in excess of one hundred thousand, and the receipt of the treasurer of state for the same shall be filed with the secretary of state before he shall be authorized to receive any certificate of any increase of capital stock.

Sec. 43. Reduction of capital stock.—If the stockholders of any corporation organized under this chapter shall desire to decrease the amount of its capital stock, the stockholders at a meeting duly called for the purpose or at any annual meeting when notice shall have been given of such proposed action in the call therefor, may by a vote representing a majority of all the stock issued decrease the amount of its capital stock to any amount desired, and the corporation shall give notice of such change to the secretary of state within ten days thereafter. And each stockholder shall within three months after such meeting surrender such a proportion of his stock as the amount of decrease shall bear to the amount of the capital stock before the decrease, so that each stockholder shall have the same proportion of the whole capital stock of the company as before the decrease; provided, however, that if at the time of such decrease there shall remain in the treasury of said corporation any unissued capital stock, such decrease may be effected by first retiring such unissued capital stock not exceeding the amount of such decrease. This section shall not affect or prejudice in any way the rights of creditors of such corporation existing at the time when the reduction of its capital stock authorized hereunder shall be consummated.

Sec. 44. Reduction of capital when impaired.—Whenever the assets of a corporation have been so diminished by losses or depreciation of property, that its capital is impaired, such corporation, at any meeting of the stockholders legally called therefor, with the consent of not less than two-thirds in amount of all its outstanding stock, expressed at such meeting or at any adjournment thereof, may reduce such stock to the extent of such impairment, and thereupon the par value of all shares issued or to be issued shall be reduced proportionally.

Sec. 45. Remedy of stockholder dissenting from proceedings.—Within thirty days after such reduction any stockholder who has not agreed thereto, may file a bill in equity in any county in

which said corporation has an established place of business, or in which it held its last stockholders' meeting, for a revision of its proceedings in making said reduction, upon which bill such proceedings may be annulled or modified, so that such reduction shall not exceed the actual impairment of capital. The action of the court, or, if no bill is filed as aforesaid, the action of the corporation, as provided in the preceding section, shall be conclusive upon all parties, whether stockholders or creditors, and such reduction shall not create any personal liability of any stockholder or officer thereof.

Sec. 46. Clerk to file copy of proceedings under section 44—penalty for neglect.—The clerk of said corporation shall file with the secretary of state a certified copy of such proceedings, within thirty days after they are taken, or forfeit one thousand dollars, to be recovered by action of debt in favor of any existing or future creditor of such corporation first suing therefor in any court or county in which a transitory action between the same parties may be brought.

Sec. 47. Issue of new shares after reduction under section 44.—Simultaneously with or after such reduction of its stock, such corporation may from time to time authorize the issue of new shares, of the reduced par value, until the gross capital equals the gross capital authorized by its charter or articles of association before such reduction was made, although the new shares increase the whole issue beyond the number authorized by such charter or articles.

Sec. 48. Notice of changes in certificate of organization to be filed.—Whenever a corporation shall make a change in its charter or certificate of organization, in any manner, for the more convenient transaction of its business, it shall forward a notice of such change to the secretary of state, who shall record the same in a book kept for that purpose.

CORPORATE POWERS.

Sec. 49. General corporate powers.—Corporations may sue and be sued, plead and be impleaded, in their corporate name; have a common seal alterable at pleasure; elect all necessary officers; prescribe their duties and fix their compensation; make by-laws consistent with the laws of the state and their charters; and hold and convey lands and other property.

[16 Me., 229; 17 Me., 442; 20 Me., 46; 23 Me., 41; 29 Me., 126; 43 Me., 182; 50 Me., 550; 56 Me., 420; 58 Me., 20; 61 Me., 167; 68 Me., 43.]

Sec. 50. By-laws—filling of vacancies—change of name.—Corporations may among other provisions, determine by their by-laws, the manner of calling and conducting meetings; the number of members that constitute a quorum; the number of votes to be given by shareholders; by whom any or all officers, except president and directors shall be elected; by whom vacancies in the board of directors or other offices may be filled; the tenure of the several offices; the mode of voting by proxy; and of selling shares for neglect to pay assessments; and may enforce such by-laws by penalties not exceeding twenty dollars.

Sec. 51. Change of name.—A corporation, at a legal meeting of its stockholders, may vote to change its name and adopt a new one, and when the proceedings of such meeting, relating to such change of name certified by the clerk thereof, are returned to the office of the secretary of state to be recorded by him, the name shall be deemed changed; and the corporation, under its new name, has the same rights, powers and privileges, and is subject to the same duties, obligations and liabilities as before, and may sue and be sued by its new name; but no action brought against it by its former name, shall be defeated on that account, but on motion of either party, the new name may be substituted therefor in the action; provided, that whenever any corporation, required by law to make returns to any official or department of the state, shall change its name under the general laws of the state, or under any special act of the legislature, such change shall not take effect and such new name shall not be used until said corporation shall have filed with said official or said department a certified copy of the vote of the corporation relative thereto.

[68 Me., 84.]

Sec. 52. May conduct business and have officers anywhere in the world.—Any corporation of this state may conduct business in other states, territories or possessions of the United States, or in foreign countries, and have one or more officers out of the state and may hold, purchase, mortgage and convey real estate and personal property out of this state.

Sec. 53.—May create preferred and other stocks and fix voting power.—Every corporation may create two or more kinds of stock with such classes and with such designations, preferences and voting powers, or restrictions or qualifications thereof, as shall be fixed and determined in the by-laws, or by vote of the stockholders at a meeting duly called for the purpose.

Sec. 54. May issue full-paid stock for property or services—directors' valuation conclusive.—Any corporation may purchase mines, manufactories and other property necessary for its business, and the stock of any company or companies owning, mining, manufacturing or producing materials or other property necessary for its business, and issue stock to the amount of the value thereof in payment therefor, and may likewise issue stock for services rendered to such corporation and the stock so issued shall be full paid stock and not liable to any further call or payment thereon; and in the absence of actual fraud in the transaction, the judgment of the directors as to the value of the property purchased, or services rendered, shall be conclusive.

[105 Me., 403.]

Sec. 55. May hold and dispose of stock, bonds, etc., of other corporations.—Any corporation organized under this chapter and any corporation organized for manufacturing, mechanical, mining or quarrying business, under special act of the legislature, may purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock of, or any bonds, securities or evidences of indebtedness created by any other corporation or corporations of this or any other state, territory or country, and while owners of such stock may exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

Sec. 56. May change location.—Any corporation organized under this chapter at a legal meeting of its stockholders, by a vote representing a majority of the stock issued, may change its location from one county to another in the state, and the corporation shall file, by its clerk or other officer, in the registry of deeds in each of said counties, within twenty days after such change of location, the certificate required by section twenty-four.

TRUSTS.

Sec. 57. Formation of trusts forbidden.—It shall be unlawful for any firm or incorporated company, or any number of firms or incorporated companies, or any unincorporated company, or association of persons or stockholders, organized for the purpose of manufacturing, producing, refining or mining any article or product, which enters into general use and consumption by the people, to form or organize any trust, or to enter into any combination of firms, incorporated or unincorporated companies, or association of stockholders, or to delegate to any one or more board or boards of trustees or directors the power to conduct and direct the business of the whole number

of firms, corporations, companies or associations which may have formed, or which may propose to form a trust, combination or association inconsistent with the provisions of this section and contrary to public policy.

Sec. 58. Evidences of interest in trusts are of no validity.—No certificate of stock, or other evidence of interest, in any trust, combination or association, as named in the preceding section, shall have legal recognition in any court in this state, and any deed of real estate given by any person, firm or corporation, for the purpose of becoming interested in such trust, combination or association, or any mortgage given by the latter to the seller, as well as all certificates growing out of such transaction, shall be void.

Sec. 59. Penalty for being connected with trusts.—Any firm, incorporated or unincorporated company, or association of persons or stockholders, who shall enter into or become interested in such trust, combination or association, shall be subject to a fine of not less than five, nor more than ten thousand dollars.

RIGHTS OF MINORITY STOCKHOLDERS.

Sec. 60. Corporation shall not sell franchises or entire property without consent of stockholders.—No corporation shall sell, lease, consolidate or in any manner part with its franchises, or its entire property, or any of its property, corporate rights or privileges essential to the conduct of its corporate business and purposes, otherwise than in the ordinary and usual course of its business, except with the consent of its stockholders at an annual or special meeting, the call for which shall give notice of the proposed sale, lease or consolidation.

All such sales, leases and consolidations shall be subject to the provisions of this and the eleven following sections, and to the prior lien of stockholders as therein defined. Except as to franchises, this and the eleven following sections shall not be held to apply to mortgages of corporate property.

Sec. 61. Remedy of dissenting stockholder.—If any stockholder in any corporation which shall vote to sell, lease, consolidate or in any manner part with its franchises, or its entire property, or any of its property, corporate business and purposes, otherwise than in the ordinary and usual course of its business, shall vote in the negative and shall file his written dissent therefrom with the president, clerk or treasurer of such corporation within one month from the day

of such vote, the corporation, in which he is a stockholder may within one month after such dissent is so filed, enter a petition with the supreme judicial court, sitting in equity, in the county where it held its last annual meeting, in term time or in vacation, setting forth in substance the material facts of the transaction, the action of the corporation thereon, the names and residences of all dissenting stockholders whose dissents were so filed, making such dissenting stockholders parties thereto, and praying that the value of the shares of such dissenting stockholders may be determined, and for other appropriate relief.

Sec. 62. Procedure of dissenter if corporation fails to act.—If any such corporation shall fail to enter such petition as aforesaid, any stockholder dissenting as aforesaid may within one month thereafter enter such petition and prosecute the same, making such corporation party defendant. In either case the court shall fix the time of hearing and shall order notice thereof to all parties interested, by publication in some newspaper or newspapers at least two weeks successively, and such personal service as is required upon bills in equity.

Sec. 63. Sale may proceed on depositing judicially valued amount of dissenter's stock.—The court, or any justice thereof in term time or in vacation, shall hear the parties and determine as soon as practicable the value of the stock of such dissenting stockholders; and shall make and enforce all such orders and decrees as may be necessary to secure to such stockholders all their rights. Such corporation shall, notwithstanding any appeal as hereinafter authorized, forthwith deposit the amount so awarded, in some bank or trust company designated by the court, to be by it held until final judgment, and paid to the parties as thereafter ordered by the court directing such deposit. Upon such deposit and upon compliance with final judgment as hereinafter provided, the shares of such stockholders shall become the property of such corporation, and the court may make and enforce such orders as may be necessary to secure its title thereto.

Sec. 64. Proceedings on appeal.—Within thirty days after filing the decree determining such values, as aforesaid, either party may enter an appeal therefrom, to be heard at the next term of the supreme judicial court in the county where such petition is pending. The issue may thereupon, at the request of any party thereto, be submitted to a jury. If upon such trial the amount of such award is increased, the stockholder shall have judgment and execution

against the petitioning corporation or corporation defending, for such increase with interest and costs; and if not increased, such corporation may withdraw from said deposit, the amount of the decrease with interest and costs. During the pendency of such appeal, the appellant shall have a lien upon all the property of the corporation interested in such sale or lease, or consolidation for thirty days after judgment on appeal. Such lien shall have precedence over any mortgages or leases made after any vote of sale, lease or consolidation. All such liens may be released upon filing with the court, a bond in such amount and with such sureties as the court may approve. Two or more stockholders may join in the same appeal.

Sec. 65. Failure to file dissent is equivalent to assent—stockholders under disability.—Any stockholder failing to file his dissent as required in section sixty-one shall be deemed to have assented to such vote. If it appears that any stockholder is legally incapacitated from giving such assent or waiver, the court shall appoint suitable guardians or representatives for such persons, and the case shall then be heard and determined as if such stockholders had filed their dissent as required by section sixty-one. *Provided, however,* that, if the proceedings hereby authorized are not had, then as against any stockholder who is a minor, or otherwise legally incapacitated, and who has no guardian, the period of one month in which to file the written dissents aforesaid shall not begin to run until the removal of the incapacity, by the appointment of a guardian or otherwise and actual notice of the vote of sale, lease or consolidation.

Sec. 66. Deposit of certificates—transfers.—Every stockholder appearing in answer to, or filing any petition, by himself, guardian or other legal representative, shall simultaneously therewith or within such time as the court may allow, deposit in court his certificate of shares duly indorsed to the corporation of which he is a shareholder, or some other sufficient transfer thereof, which shall there remain subject to the order of the court. All attachments and transfers of such shares shall be subject to the final decrees in such proceeding; and any such attaching creditor or transferee shall be allowed to become a party to the proceedings to protect his interests; and if such person, so claiming under such transfer or attachment omits or fails to intervene in such proceedings, his omission as a party shall not bar or impair the proceedings.

Sec. 67. Remedies of dissenters if corporation fails to pay.—If none of the corporations interested in such petition shall pay or deposit the amount as herein ascertained and decreed, with interest thereon, within such time as the court shall order, any stockholder

entitled to such amount, may at his option take judgment and execution therefor, with interest and costs, against such corporation or withdraw his stock aforesaid; and after such withdrawal or if said execution is returned unsatisfied within thirty days after judgment, the owner of such shares shall retain all the rights of a dissenting stockholder as though no proceedings had taken place. All stockholders entitled to a remedy hereunder, shall have a lien upon the property of the corporations in which they are stockholders which shall take precedence of all mortgages or leases, of any kind made after any vote of sale, lease or consolidation. Such liens may be released as provided in section sixty-four.

Sec. 68. Powers of court in the premises.—The supreme judicial court, or any justice thereof, may in term time or vacation hear and determine said petitions, and make all orders for giving notice to non-resident parties, and taking action with reference to them, for the enforcement of the rights of any party to the proceedings, for the consolidation of two or more petitions, for the payment of interest on the adjudged value of the shares, for the payment of dividends, pending the proceedings, for interest upon the deposit aforesaid, for the distribution of costs between the parties and for enforcing its orders and decrees, as are consistent with the principles of equity practice, and as the convenient and speedy settlement of the controversy may require.

Sec. 69. New petition in certain cases.—If any petition shall fail for any matter of form, any party interested therein may file a new petition within two months thereafter. No petition shall be abated by the death of any party, but may thereupon be summarily revived by suggestion and amendment.

Sec. 70. Exceptions.—The proceedings hereby authorized shall not apply to nor affect any special act relating to the rights of minority stockholders in any particular corporations enacted before the fourth day of April, eighteen hundred and ninety-one, nor any mortgage legally made.

Sec. 71. Valuation proceedings in other states a bar.—If either of the corporations interested has consolidated its stock with corporations created by any other state or states, or the stock therein is held by virtue of concurrent legislation of one or more states, and proceedings have been commenced for valuing the stock and paying the value thereof in any state having jurisdiction, such proceedings, shall, while pending, be a bar to any under this chapter; but if such

proceedings in any other state shall fail for any reason not touching the merits, a petition may be filed as herein provided, within two months thereafter.

CORPORATE CONTRACTS AND LIABILITIES.

Sec. 72. Corporate contracts.—Corporations are bound by parol contracts made by an agent authorized by vote or by their by-laws. Contracts may be implied from corporate acts, or from the acts of the general agent.

[7 Me., 120; 24 Me., 38, 502; 26 Me., 435; 29 Me., 126; 103 Me. 79; 106 Me., 387.]

Sec. 73. Foreclosure of mortgages securing scrip and bond issues.—The provisions of chapter fifty-seven, sections thirty-six to fifty-eight inclusive, shall apply to and include all mortgages of franchises, lands or other hereditaments, or of all of them, heretofore or hereafter given by any corporation to trustees to secure scrip or bonds of said corporation; and the holder of said scrip or bonds shall have the benefit of all said provisions, whether the said mortgages have been or may be foreclosed in the manner provided by section thirty-six of said chapter, or in any other legal manner, and to the extent of and with reference to the property covered by the mortgage; the new corporation, when organized, shall have the rights and privileges of the original corporation.

[Note—The sections referred to are as follows:]

Ch. 57, Sec. 36. Method of foreclosure.—The trustees, on application of one-third of the bondholders in amount, to have such mortgage foreclosed, shall immediately give notice thereof, by publishing it three weeks successively in the state paper and in some paper, if any, in each county into which the road extends, therein stating the date and conditions of the mortgage, the claims of the applicants under it, that the conditions thereof have been broken, and that for that reason they claim a foreclosure; and they shall cause a copy of such notice and the name and date of each newspaper containing it, to be recorded in the registry of deeds in every such county, within sixty days from the first publication; and unless, within three years from the first publication, the mortgage is redeemed by the mortgagors or those claiming under them, or a bill in equity as in cases of the redemption of mortgaged lands is commenced, founded on payment or a legal tender of the amount of overdue bonds and coupons, or containing an averment that the complainants are ready and willing to redeem on the rendering of an account, the right of redemption shall be forever foreclosed.

[50 Me., 561; 54 Me., 184; 59 Me., 20, 47, 69; 66 Me., 491, 507; 88 Me., 90.]

Sec. 37. Presentation of overdue bonds and coupons for record.—Each holder of overdue bonds or coupons shall present them to the trustees at least thirty days before the right of redemption expires, to be by them recorded; and such right is not lost by the non-payment of any claims not so presented, and the parties having the right to redeem shall have free access to the record of such claims.

Sec. 38. Foreclosure constitutes holders a corporation.—The foreclosure of the mortgage shall inure to the benefit of all the holders of bonds, coupon, and other claims secured thereby; and they, their successors and assigns are constituted a corporation, as of the date of the foreclosure, for all the purposes, and with all the rights and powers, duties and obligations of the original corporation by its charter; and the trustees shall convey to such new corporation by deeds all the right, title and interest which they had by the mortgage and the foreclosure thereof, and thereupon they shall be discharged. If they neglect or refuse so to convey, the court, on application in equity, may compel them so to do.

[59 Me., 70; 66 Me., 507; 74 Me., 426; 88 Me., 90.]

Sec. 39. First meeting of new corporation.—The new corporation may call its first meeting in the manner provided for calling the first meeting of the original corporation, and may use therefor the old name, or by a notice, signed by one or more of said bondholders, setting forth the time, place and purpose of the meeting, a copy of which is to be published in a newspaper, in the county, if any, otherwise in the state paper, seven days before the meeting; but, at that meeting, it may adopt a new name by which it shall always thereafter be known; and it may take and hold the possession, and have the use of the mortgaged property, although a bill in equity to redeem is pending, and it may become a party defendant to such bill. This section applies to all corporations mentioned in section sixty.

[66 Me., 507; 88 Me., 90.]

Sec. 40. May redeem prior mortgage and make assessments therefor.—If any part of such property or franchise is subject to a prior mortgage, such new corporation, at a legal meeting called for that purpose, may vote to redeem the same, and make an assessment therefor on all holders of stock, certificates for fractions of stock, bonds, or coupons in such corporation in proportion to their amounts. The directors shall immediately assess such sum, and fix a time and place for the payment thereof to the treasurer, who shall publish notice accordingly six weeks successively in some newspaper, if any, in each of the counties where the road extends, the last publication to be two weeks at least before the time fixed for payment.

[66 Me., 507; 88 Me., 90.]

Sec. 41. Enforcement of Assessments.—If any person fails to pay his assessment within the time fixed, the treasurer shall sell enough of his stock at auction to pay the same, with twelve per cent. interest and the cost of advertising and selling, by first publishing notice of such sale three weeks successively in a newspaper printed in the county where the sale is to be, if any, and if not, in an adjoining county. Thereupon the president and treasurer shall issue a new certificate of stock to the purchaser; and the delinquent stockholder

shall surrender his certificate to be cancelled, and may have a new one for his unsold shares; and if he held bonds, coupons or certificates for fractions of stock, he shall not be entitled to commute them or to receive any dividends thereon until he has paid his assessment, with twelve per cent. interest.

[66 Me., 507.]

Sec. 42. Application of funds.—The directors shall apply the money realized from such assessments solely to the redemption of such prior mortgage until it is fully paid; and then all the property, rights and interests secured thereby vest in such new corporation.

Sec. 43. Redemption of prior mortgages by mortgagees.—When a subsequent mortgage of a railroad, its franchise or any part of its other property, contains no provision for a sale, or contains a conditional provision depending on the application of a majority in amount of the claims secured thereby, and no such application has been made to the trustees, the holder of such mortgage may redeem a prior mortgage on the same property which is under process of foreclosure, at any time before it becomes absolute; and holds it in trust for those who contributed thereto in proportion to the amount paid by each.

[66 Me., 507.]

Sec. 44. May vote to redeem.—For such purpose, the trustees of such subsequent mortgage, on application of one or more persons interested therein, made six months prior to the absolute foreclosure of such prior mortgage, and on payment of reasonable expenses to be incurred thereby, shall call a meeting of all interested and publish a notice thereof, stating the time, place and purpose, three weeks successively in the state paper and such other papers as they think proper. If at such meeting, or one called by the trustees without application, the holders of a majority of the interests there represented vote to redeem the prior mortgage, each one may contribute his proportion thereto. The trustees shall give immediate notice of such vote by publishing it as above, and shall therein state the time and place of payment, and the amount to be paid on each hundred dollars as nearly as may be. If any one fails to pay his proportion, any other person interested in said subsequent mortgage may pay it, and succeed to all his rights except as hereinafter provided.

Sec. 45. Anyone interested in subsequent mortgage may redeem.—If no such meeting is called, or it is voted not to redeem, one or more of the persons interested in such subsequent mortgage, may pay to the trustees thereof the amount required to redeem the prior mortgage; and such trustees shall redeem it accordingly and then hold it in trust for the person so paying.

Sec. 46. Delinquents may pay and be restored to rights.—When a prior mortgage has been redeemed in either mode aforesaid, and all persons interested in the subsequent mortgage have not paid their proportions thereof, the trustees shall publish a notice ten weeks successively in the state paper, the first publication not to be until

the right of redeeming the prior mortgage would have expired, that delinquents may pay the same to them or their agents, with twelve per cent. interest, within one year from the first publication of said notice; and any person so paying has the same rights as if he had paid originally; and those not so paying are barred. Money so paid shall be divided ratably to those who advanced the redemption money; and they may become a new corporation, and new certificates of stock or fractions of stock may be issued in the manner and with the rights, powers and obligations hereinbefore provided.

Sec. 47. Redemption by stockholders of old corporation.—When a prior mortgage is thus redeemed, any number of the stockholders of the old corporation may redeem it within two years thereafter by paying to the trustees of such subsequent mortgage the amount paid therefor, with ten per cent. interest, and also the amount secured by the subsequent mortgage due to those who had contributed to redeem the prior mortgage, after deducting the net earnings of said road or adding the net deficiencies, if operated by the trustees of the subsequent mortgage; and said stockholders may demand of said trustees an accurate account of the receipts and expenditures and amount due on the mortgage, and have the same remedies for a failure as in case of mortgages of real estate. After such redemption, the redeeming stockholders have all the rights of those from whom they redeemed.

[54 Me., 185.]

Sec. 48. Notice to and rights of non-contributors.—The stockholders redeeming as aforesaid, shall give notice to the stockholders who have not contributed thereto; and the latter shall have the same rights as hereinbefore provided in the case of bondholders.

Sec. 49. Extention of time of redemption after foreclosure commenced.—The persons interested in a prior mortgage on which a foreclosure is commenced, at a meeting called for the purpose, may extend the time of redemption; and thereupon the trustees of such mortgage, by a suitable writing, delivered to the party entitled to redeem, shall extend the time accordingly.

Sec. 50. Purchasers at sale to have rights of original corporation.—When the franchise of a railroad and its road, wholly or partly constructed, or the right of redeeming the same from a mortgage thereof, are sold by a decree of court, by a power of sale in a mortgage thereof, or on execution, the purchasers have all the rights, powers and obligations of the corporation, under its charter, and may form a new corporation in the manner hereinbefore provided. If the original corporation or those claiming under it have a right to redeem, they may do so in the manner provided for the redemption of mortgaged real estate; but shall pay in addition to the amount of the sale and interest, the reasonable expenditures made by the new corporation in completing, repairing and equipping said road, and in the purchase of necessary property therefor, after deducting the net earnings thereof.

[88 Me., 91.]

Sec. 51. Succession to rights and limitations of original corporation.—The trustees of bondholders or other parties under contract with them operating a railroad, and all corporations formed in the modes hereinbefore provided, have the same rights, powers and obligations as the old corporation had by its charter and the general laws; but all said rights and privileges are also subject to amendment, alteration or repeal by the legislature, and to all the general laws concerning railroads, notwithstanding anything to the contrary in the original charter.

[66 Me., 509.]

Sec. 52. Original corporation continues to close business and for suits.—The original corporation shall exist, after the foreclosure of the mortgage, for the sole purpose of closing its unsettled business; and the right of action against it or its stockholders is not thereby impaired; but in suits founded on any of the bonds or coupons secured by the mortgage, the proportional actual value of the property taken under the mortgage shall be deducted.

[66 Me., 507.]

Sec. 53. Supreme court has jurisdiction in equity—rights at law preserved.—The supreme judicial court, in addition to the jurisdiction specifically conferred by this chapter, has jurisdiction, as in equity, of all other matters in dispute arising under the preceding sections relating to trustees, mortgages, and the redemption and foreclosure of mortgages; but not to take away any rights or remedies that any party has and may elect to enforce at law; and in all proceedings relating to trustees or to mortgages, their foreclosure and redemption, not otherwise specifically provided for herein, the law relating to trusts and mortgages of real estate may be applied.

[85 Me., 88.]

Sec. 54. Preceding sections to apply to mortgages of corporations to trustees, as if legally foreclosed.—Sections thirty to fifty-three each inclusive, apply to and include all mortgages of franchises, lands, property, hereditaments and rights of property of every kind whatever, whether heretofore given or hereafter to be given by any corporation to trustees, to secure the payment of scrip or bonds of said corporation in all cases in which the principal of said scrip or bonds has been due and payable for more than three years, and remains unpaid in whole or in part, or on which no interest has been paid for more than three years, in the same way and to the same extent as if the mortgage had been legally foreclosed, subject to all rights of redemption, as provided in section forty; and the holders of said scrip or bonds shall have the benefit of said sections, and all the rights and powers of the corporation under its charter, and may form a new corporation in the manner provided in this chapter, whenever the holder of such scrip or bonds to an amount exceeding one-half of the same so elect, in writing. And any subsequent foreclosure, in any method provided by law, of the mortgage given to secure such bonds or scrip shall inure at once for the benefit of such corporation, and vest therein the title acquired by such foreclosure.

[171 U. S., 641; 88 Me., 92.]

Sec. 55. Holders of unpaid scrip and bonds may foreclose mortgage.—A corporation formed by the holders of such scrip or bonds, or if no such corporation has been formed, the holders of not less than a majority of such scrip or bonds may commence a suit in equity to foreclose such mortgage, and the court may decree a foreclosure thereof, unless the arrears are paid within such time as the court orders.

[88 Me., 96.]

Sec. 56. Amount of capital or new corporation—no liability on shares.—The capital stock of such new corporation shall be equal to the amount of unpaid bonds and overdue coupons secured by such mortgage, taken at their face at the time of the organization of the new corporation, together with the amount required to redeem any prior mortgage, and shall be divided into shares of one hundred dollars each. All stock issued under the aforesaid provisions shall be taken and considered as paid for in full, and shall not be liable to further assessment; and no person, taking or holding the same, shall by reason thereof be liable for the debts of such corporation.

Sec. 57. Certificate of organization filed with secretary of state; if railroad corporation, filed with public utilities commission.—Whenever a corporation is organized under the provisions of sections thirty-eight, fifty or fifty-four of this chapter, or under any other provision of law by which a return is not specifically required, such corporation shall file with the secretary of state, and, if a railroad corporation, also with the public utilities commission, a certificate signed and sworn to by the president, treasurer and a majority of the directors of such corporation, therein setting forth the name of the corporation and all facts as to such organization which are necessary to give full information in relation thereto; the organization of such corporation shall date from, and it shall have the authority and rights of a corporation only after filing said certificate.

Sec. 58. New Corporation may buy rights of redemption.—Any corporation, formed under this chapter by the holders of railroad bonds, may acquire, by purchase, the right of redemption under the mortgage securing such bonds.

[88 Me., 91.]

Sec. 74. Service of process when foreign corporation is trustee.—In case of the mortgage of franchises, lands or other hereditaments by any domestic corporation to a foreign corporation as trustee, service of process may be made on any authorized agent of such foreign corporation in the state; or if no such agent can be found, such service may be made upon the bank commissioner, who shall immediately notify the corporation by mail. Service made in either of said methods shall be valid and binding upon the corporation in every respect.

Sec. 75. Property and franchise attachable.—The property of any corporation, and the franchise of one having a right to receive

a toll established by the state, with its privileges and immunities, are liable to attachment on mesne process and levy on execution for debts of the corporation, in the manner prescribed by law.

[97 Me., 302; 112 Me., 439.].

Sec. 76. Facts to be furnished attaching officer by person in charge of property.—Every agent or person having charge of corporate property, shall, on request, furnish to any officer having a writ or execution against the corporation for service, the names of the directors and clerk, and a schedule of all property, including debts known by him to belong to the corporation.

Sec. 77. Debts due corporations may be taken on execution.—An officer, having an execution against a manufacturing corporation and unable to find property liable to seizure, or the creditor, may elect to satisfy it, in whole or in part, by a debt due to the corporation not exceeding the amount due to the creditor, and the person having custody of the evidence of such debt shall deliver it to such officer with a written transfer thereof to him for the use of the creditor, which shall constitute an assignment thereof, and the creditor, in the name of the corporation, may sue for and collect it, subject to any equitable set-off by the debtor.

Sec. 78. Penalty for non-compliance with sections 76 and 77.—Any officer or other person, who unnecessarily neglects or refuses to comply with the two preceding sections, forfeits not exceeding four times the amount due on such execution, and may be imprisoned less than one year.

Sec. 79. Production of books in certain cases—penalty.—When a suit or prosecution is pending for a violation of section thirty-four or either of the three preceding sections, the clerk or person having custody of the books of the corporation, shall, upon reasonable written notice, produce them on trial; and for neglect or refusal so to do, he is liable to the same fine or imprisonment as the party on trial would be.

RECEIVERS—DISSOLUTION OF CORPORATIONS.

Sec. 80. Foreign corporations may sue and be sued and property attached.—Corporations existing by the laws of another state or of a foreign jurisdiction, may sue or be sued by their corporate name in this state; and if they have property in this state it may be attached and appraised and set off on execution, as the property of

non-resident individuals. The acts of their agents have the same effect as the acts of agents of foreign private persons, unless prohibited by law.

[17 Me., 36; 29 Me., 467; 55 Me., 294.]

DISSOLUTION OF CORPORATIONS.

Sec. 81. Qualified existence for three years after expiration of charter.—Corporations, whose charters expire or are otherwise terminated, have a corporate existence for three years thereafter; to prosecute and defend suits; to settle and close their concerns; to dispose of their property; and to divide their capitals.

[55 Me., 293; 92 Me., 476; 106 Me., 178.]

Sec. 82. Receivers of corporations.—Whenever any corporation shall become insolvent, or be in imminent danger of insolvency, or whenever through fraud, neglect of gross mismanagement of its affairs, or through attachment, litigation or otherwise, its estate and effects are in danger of being wasted or lost, or whenever it has ceased to do business, or its charter has expired or been forfeited, upon application of any creditor or stockholder by bill in equity filed in the supreme judicial court in the county in which it has an established place of business, or in which it held its last stockholders' meeting, upon which bill such notice shall be given as may be ordered by any justice of such court, in term time or vacation, such court may, if it finds that sufficient cause exists, issue an injunction, both temporary and permanent, restraining said corporation, its officers and agents, from receiving any moneys, paying any debts, selling or transferring any assets of the corporation, or exercising any of its privileges or franchises until further order, and may at any time make a decree dissolving said corporation.

Sec. 83. Appointment of receivers.—At the time of ordering any such injunction or at any time afterwards during its continuance, such court may also appoint one or more receivers to wind up the affairs of the company, who shall be duly sworn, and give bond in such sum and upon such conditions as such court shall determine, and shall at all times be subject to the direction and control of the court, which may at any time remove said receiver and appoint another in his place. All attachments made within thirty days before the filing of any such bill in equity, wherein a receiver is so appointed, shall thereupon be dissolved.

[113 Me., 182.]

Sec. 84. Suits by or against receiver.—Such receiver shall have power to institute or defend suits at law or in equity, in his own name as receiver, to demand, collect and receive all property and assets of said corporation, to sell, transfer, or otherwise convert the same into cash, and to conduct and carry on the business of said corporation, as ordered by the court, if it appears for the best interests of all concerned. He shall report to the court at least as often as every six months a statement of all the assets and liabilities of said corporation, and from time to time shall distribute the assets of said corporation as provided in section eighty-eight.

[113 Me., 86.]

Sec. 85. Time limit for presentation of claims.—Whenever a receiver is appointed as above, the court shall limit a time, not less than four months, of which decree notice shall be given, within which all claims against said corporation shall be presented, and make such order for the manner of hearing and proving same as may be just and proper.

Sec. 86. Sale of corporate property and franchises.—Said court may in its discretion, in lieu of decreeing the dissolution of such corporation, order the receiver to sell its property and franchises; and the purchaser thereof shall succeed to all the rights and privileges of such corporation, and may reorganize the same under the direction of said court. At any sale of such property at public auction, the court may, in its discretion, authorize the receiver to accept in payment, duly allowed claims against such corporation, at a proper valuation.

Sec. 87. Equity jurisdiction of court.—The court shall have jurisdiction in equity of all proceedings hereunder and may make such orders and decrees as equity may require.

Sec. 88. Trustees to pay debts and divide balance.—The debts of the corporation shall be paid in full, when the funds are sufficient; when not, ratably to those creditors, who prove their debts, as the law provides, or as the court directs. Any balance remaining shall be distributed among the stockholders or their legal representatives in proportion to their interests.

[60 Me., 173; 79 Me., 316; 102 Me., 376; 106 Me., 181; 113 Me., 536; 111 U. S., 110.]

Sec. 89. Bill in equity for dissolution of corporation.—Except where otherwise provided by statute, whenever at any meeting of its stockholders, legally called therefor, such stockholders vote to

dissolve such corporation, a bill in equity against the same for dissolution thereof, may be filed by any officer, stockholder or creditor in the supreme judicial court, in the county in which it has an established place of business, or in which it held its last stockholders' meeting; upon said bill, such notice shall be given as may be ordered by any justice of said court, in term time or vacation, and upon proof thereof, such proceedings may be had according to the usual course of suits in equity, that said corporation shall be dissolved and terminated. Upon proof that there are no existing liabilities against said corporation, and no existing assets thereof, requiring distribution among the stockholders, said court may dissolve said corporation without the appointment of trustees or receivers.

[79 Me., 316; 106 Me., 179; 107 Me., 187.]

Sec. 90. Jurisdiction of court—powers of trustees.—Said court has jurisdiction in said cause to appoint receivers, issue injunctions, and pass interlocutory decrees and orders, according to the usual course of proceedings in equity; and shall, moreover, upon dissolving said corporation, or upon terminating its charter, appoint one or more trustees, who shall have all the powers conferred upon similar trustees by sections eighty-one, eighty-eight, and ninety-eight, or by any other law of the state, with such special powers as may be given them by said court. But, notwithstanding the appointment of such trustees, said court may superintend the collection and distribution of the assets of said corporation, and may retain said bill for that purpose.

Sec. 91. Stockholders' liability not affected by dissolution.—Nothing in the two preceding sections relieves any officer, shareholder or other person from any liability, except as provided therein.

Sec. 92. Decree of dissolution to be filed.—A copy of every decree or judgment dissolving a corporation or forfeiting its charter shall be forthwith filed by the clerk of the court in the office of the secretary of state and there recorded.

LIABILITY OF SHAREHOLDERS.

Sec. 93. Stockholders in representative capacity not personally liable.—Persons holding stock as executors, administrators, guardians or trustees, shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate,

ward or person interested in such trust funds would be if they were respectively living and competent to act and hold the stock in their own names.

[104 Me., 155.]

Sec. 94. Pledgee for value not liable.—A pledgee for value, holding a certificate of stock of a corporation for security merely, shall not, while he so holds such stock, be subject to any of the liabilities of a stockholder, unless he appears on the books of the corporation as the absolute owner of such stock.

Sec. 95. Liability limited to par value of stock held.—No stockholder in any corporation, except in banks, trust and banking companies, and when otherwise provided by the act of incorporation has, after February twenty-four, eighteen hundred and seventy-one, been liable for the debts of or claims against such corporation beyond any amounts withdrawn or not paid in, as provided in the two following sections; but neither this section nor the four following, affect past or future liabilities of any officer of any corporation; nor any liability of any person or corporation or remedy therefor, existing on said twenty-fourth day of February.

[75 Me., 521; 86 Me., 66; 89 Me., 127; 92 Me., 444.]

Sec. 96. Payment defined.—The capital stock subscribed for any corporation is declared to be and stands for the security of all creditors thereof; and no payment upon any subscription to or agreement for the capital stock of any corporation, shall be deemed a payment within the purview of this chapter, unless bona fide made in cash, or in some other matter or thing at a bona fide and fair valuation thereof.

[64 Me., 382; 78 Me., 178; 82 Me., 403, 511; 86 Me., 66; 92 Me., 451; 93 Me., 163.]

Sec. 97. Illegal dividends and withdrawals.—No dividend declared by any corporation from its capital stock or in violation of law, no withdrawal of any portion of such stock, directly or indirectly, no cancellation or surrender of any stock, and no transfer thereof in any form to the corporation which issued it, is valid as against any person who has a lawful and bona fide judgment against said corporation, based upon any claim in tort or contract or for any penalty, or as against any receivers, trustees or other persons appointed to close up the affairs of an insolvent corporation.

[64 Me., 382; 78 Me., 178; 82 Me., 402; 86 Me., 66; 93 Me., 163; 111 Me., 475.]

Sec. 98. Enforcement of stockholders' liability—defenses— Any person having such judgment, or any such trustees, receivers or other persons appointed to close up the affairs of an insolvent corporation, may, within two years after their right of action herein given accrues, commence an action on the case or bill in equity, without demand or other previous formalities, against any persons, if a bill in equity, jointly or severally, otherwise severally, who have subscribed for or agreed to take stock in said corporation and have not paid for the same; or who have received dividends declared from the capital stock, or in violation of law; or who have withdrawn any portion of the capital stock, or canceled and surrendered any of their stock, and received any valuable consideration therefor from the corporation, except its own stock or obligation therefor; or who have transferred any of their stock to the corporation as collateral security or otherwise, and received any valuable consideration therefor as aforesaid; and in such action they may recover the amount of the capital stock so remaining unpaid or withdrawn, not exceeding the amounts of said judgments or the deficiency of the assets of such insolvent corporation. But no stockholder is liable for the debts of the corporation not contracted during his ownership of such unpaid stock, nor for any mortgage debt of said corporation; and no action for the recovery of the amounts hereinbefore mentioned shall be maintained against a stockholder unless proceedings to obtain judgment against the corporation are commenced during the ownership of such stock, or within one year after its transfer by such stockholder is recorded on the corporation books.

[64 Me., 382; 78 Me., 178; 82 Me., 402; 83 Me., 323; 84 Me., 75; 86 Me., 66, 75, 492; 88 Me., 612; 92 Me., 551; 93 Me., 163; 111 Me., 475; 113 Me., 87.]

Sec. 99. Further defenses.—A defendant in such suit may prove that he has already in good faith paid by himself or through another person who has assumed his stock or subscription, to any person holding a bona fide judgment, or to any such trustee or receiver, or other person authorized to receive it, or to the corporation itself, the whole or any part of any amounts for which he would be liable under this chapter; or that he has already in good faith and without collusion been sued for, and is still in peril of being compelled to pay, such amounts in whole or in part, to some other person, in which latter case the suit may be continued to await, on payment of defendant's costs from term to term; or he may prove that the amounts illegally received by him from said corporation were received more than two years before the claim arose on which such judgment was obtained, or if the suit is by trustees, receivers or other such person, more than two years before the commencement of the legal pro-

ceeding by virtue of which such corporation passed into the hands of trustees or receivers; or he may prove the invalidity of such judgment in any particular which could avail the corporation on a writ of error, or that said judgment was not bona fide; or he may prove that he has bona fide claims in contract or tort, several, or joint with other persons, against said corporation, absolute or contingent, or which could be availed of by set-off in court or on execution, for the whole or any part of the amounts for which he would be liable under this chapter; or in case his stock was transferred to such corporation as collateral security or as payment, he may either prove that the same was so transferred in good faith as security or payment for, or of, an anterior liability incurred without any concurrent agreement for the transfer of such stock, and for which the corporation was unable to obtain other sufficient security or payment, or in such case he may prove that whatever sum was received thereon, has been in whole or part repaid to such corporation; and proof of any of such matters is a full or partial defense for such defendant.

[78 Me., 178; 84 Me., 73; 86 Me., 66; 89 Me., 488.]

Sec. 100. Contribution.—When members of a corporation are liable for its debts, or for any acts of its officers or members, or to contribute for money paid on account of such debts or acts, the amount due may be recovered of such corporation by an action at law, or a bill in equity; and the court may make all necessary orders and decrees.

[36 Me., 84.]

Sec. 101. Capital not to be divided until debts are paid.—Corporations, not created for literary, benevolent or banking purposes, shall not so divide any of their corporate property as to reduce their stock below its par value, until all debts are paid, and then only for the purpose of closing their concerns.

Sec. 102. Bill in equity by judgment creditor in certain cases.—When such a corporation has unlawfully made a division of any of its property, or has property which cannot be attached, or is not by law attachable, any judgment creditor may file a bill in equity in the supreme judicial court, setting forth the facts, and the names of such persons as are alleged to have possession of any such property, or chases in action, either before or after division; names of defendants may be struck out or added by leave of court; costs awarded at discretion, and service made on the defendants named, as in other equity suits. They shall in answer thereto, disclose on oath all facts within their knowledge relating to such property in their hands, or received by a division among stockholders. When

either of them has the custody of the records of the corporation, he shall produce them and make extracts therefrom and annex them to his answer, as the court directs.

[77 Me., 474; 111 U. S., 110.]

Sec. 103. Procedure in such cases.—The court shall determine, with or without a jury, whether the allegations in the bill are sustained, and it may decree, that any such property shall be paid to such creditor in satisfaction of his judgment, and cause such decree to be enforced as in other chancery cases. Any question arising may, at the election of either party, be submitted to the decision of a jury under the direction of the court.

Sec. 104. On dissolution shareholders are tenants in common of property.—When a corporation is dissolved, its real and personal estate is vested in the persons who were at the time shareholders, as tenants in common according to their interests.

[16 Me., 318; 29 Me., 134; 36 Me., 190; 66 Me., 400; 79 Me., 316.]

Note.—Sections 105 and 106 are omitted as they relate to quasi public corporations.

FOREIGN CORPORATIONS.

Sec. 107. Foreign corporations must appoint an attorney.—Every corporation established under laws other than those of this state for any lawful purpose other than as a bank, savings bank, trust company, surety company, safe deposit company, insurance company or public service company, which has a usual place of business in this state or which is engaged in business in this state permanently or temporarily, without a usual place of business therein, shall before doing business in this state, in writing appoint a resident of the state having an office or place of business therein to be its true and lawful attorney upon whom all lawful processes in any action or proceedings against it may be served, and in such writing, which shall set forth said attorney's place of residence, shall agree that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served on it, and that the authority shall continue in force so long as any liability remains outstanding against it in this state. The power of attorney and a copy of the vote authorizing its execution, duly certified and authenticated, shall, [upon payment of a fee of ten dollars,]* be filed in the office of the secretary of state and copies certified by him shall be sufficient evidence thereof. Service of such process shall be made

by leaving a copy of the process in the hands or in the office of the said attorney, and such service shall be sufficient service upon the corporation. Such appointment shall continue in force until revoked by an instrument in writing designating in a like manner some other person upon whom such process may be served. Such instrument shall be filed in the manner provided herein for the original appointment [and shall be accompanied by a fee of five dollars payable to the secretary of state.]*

Sec. 108. Must file papers with secretary of state.—Every such foreign corporation before transacting business in this state, shall, [upon payment of a fee of ten dollars which is in addition to the fee provided in section one hundred fifty-one of this act,]* file with the secretary of state a copy of its charter, articles or certificate of incorporation, certified under the seal of the state or country in which such corporation is incorporated by the secretary of state thereof or by the officer having charge of the original record therein, a true copy of its by-laws and a certificate in such form as the secretary of state may require, setting forth:

- (a) The name of the corporation;
- (b) The location of its principal office;
- (c) The names and addresses of its president, treasurer, clerk or secretary and of the members of its board of directors;
- (d) The date of its annual meeting for the election of officers;
- (e) The amount of its capital stock, authorized and issued, the number and par value of its shares and the amount paid in thereon to its treasurer. Said certificates shall be subscribed and sworn to by its president, treasurer or clerk. The officers and directors of such corporation shall be subject to the same penalties and liabilities for false and fraudulent statements and returns as officers and directors of a domestic corporation. Every officer of such a corporation which fails to comply with the requirements of this section and of sections one hundred seven and one hundred eleven and every agent thereof who transacts business as such in this state shall, for such failure, be liable to a fine of not more than five hundred dollars. Such failure shall not affect the validity of any contract with such corporation, but no action shall be maintained or recovery had in any of the courts of this state by any such foreign corporation so long as it fails to comply with the requirements of said sections.

***Note.**—Clauses in brackets are not part of the statute in Chapter 51, but are part of Chapter 118. They are inserted here for convenience.

Sec. 109. Secretary of state may refuse papers.—The secretary of state shall refuse to accept or file the charter, certificate or other papers of, or accept appointment as attorney for service for, any such corporation which does a business in this state, the transaction of which by domestic corporations is not then permitted by the laws of this state.

Sec. 110. Certificates of increase or decrease of stock.—Every such foreign corporation shall, within thirty days after the payment in of an increase of capital stock, [upon payment of a fee of ten dollars,]* file in the office of the secretary of state a certificate of the amount of such increase and the fact of such payment, signed and sworn to by its president, treasurer or clerk. Within thirty days after the vote of such corporation authorizing a reduction of its capital stock, a copy of such vote, signed and sworn to by the clerk of the corporation, shall, [upon payment of a fee of ten dollars]* be filed in the office of the secretary of state.

Sec. 111. Fees payable to state.—Every such foreign corporation shall annually, on or before the first day of March, pay to the treasurer of state for the use of the state a license fee of ten dollars. It shall also annually within thirty days after the date fixed for its annual meeting, or within thirty days after the final adjournment of said meeting, but not more than three months after the date fixed for said meeting, prepare and file in the office of the secretary of state, a certificate signed and sworn to by its president, treasurer or clerk, showing the change or changes, if any, in the particulars included in the certificate required by section one hundred eight made since the filing of said certificate or of the last annual report. If no changes have occurred, a certificate to that effect shall be sufficient.

Sec. 112. Penalty for violation.—Any foreign corporation which omits to file the certificate required by section one hundred eleven shall forfeit to the state not less than five nor more than ten dollars for each day for fifteen days after the expiration of the period therein named, and not less than ten nor more than two hundred dollars for each day thereafter, during which such omission continues.

Sec. 113. Failure to file.—The secretary of state upon the failure of any such corporation to file the certificate required by section one hundred eleven shall forthwith notify such corporation, and the notice shall contain a copy of this and the two preceding sections, but a failure on the part of the secretary of state to so notify shall not relieve any corporation of any of the duties or liabilities imposed thereon by this act.

Sec. 114. Liability of officers.—The officers of such foreign corporations shall be jointly and severally liable for all the debts and contracts of the corporation contracted or entered into while they are officers thereof, if any statement or report which is required by the provisions of the seven preceding sections is made by them which is false in any material representation and known to them to be false; but only the officers who sign such statement or report shall be so liable.

Ch. 86. Sec. 107. Foreign corporations entitled to benefit of limitation of actions.—Any foreign corporation doing business continuously in this state, and having constantly an officer or agent resident herein, on whom service of any process may be made, shall be entitled to the benefit of all provisions of law relating to limitation of actions the same as domestic corporations.

PROVISIONS RESPECTING TAXATION.

State Taxation.

Ch. 9. Sec. 18. Annual franchise tax.— Every corporation incorporated under the laws of the state, except such as are excepted by section twenty-eight of chapter fifty-one, shall pay an annual franchise tax of five dollars, provided the authorized capital of said corporation does not exceed fifty thousand dollars; of ten dollars, provided said authorized capital exceeds fifty thousand dollars, and does not exceed two hundred thousand dollars; of fifty dollars, provided said authorized capital exceeds two hundred thousand dollars, and does not exceed five hundred thousand dollars; of seventy-five dollars, provided said authorized capital exceeds five hundred thousand dollars, and does not exceed one million dollars; and the further sum of fifty dollars a year for each one million dollars, or any part thereof, in excess of one million dollars.

[108 Me., 275, 297.]

Sec. 19. Assessment of said tax—due September 1.—The board of state assessors shall, on or before the first day of July, annually, assess the tax provided by the preceding section upon the authorized capital stock of each of said corporations and shall certify the same to the secretary of state, who shall thereupon notify each of said corporations of the amount of said tax assessed to it, and such tax shall become due and payable from said corporation into the state treasury, on the first day of September thereafter.

Sec. 20. Said tax a debt and preferred.—Such tax shall be a debt due from such corporation to the state, for which an action of debt may be maintained after the same shall have been in arrears for the period of one month; such tax shall also be a preferred debt in case of insolvency under the laws of this state, or in any process of liquidation in its courts.

Sec. 21. Non-payment a cause for forfeiture of charter.—If any corporation liable to taxation under section eighteen shall

for one year neglect or refuse to pay to the state any tax or penalty assessed against it hereunder, its charter shall be liable to forfeiture as hereinafter provided.

Sec. 22. Proceedings to enforce such forfeiture.—The treasurer of state, whenever any tax due under the four preceding sections from any company shall have remained in arrears for a period of six months after the same shall have become payable, shall report the same to the attorney general, who shall forthwith apply to the supreme judicial court in equity in the name of the state, for the forfeiture of the charter of such delinquent corporation, and said court shall order such notice to all parties interested as it may deem proper and shall have jurisdiction in said cause to appoint receivers, issue injunctions and pass interlocutory decrees and orders according to the usual course of proceedings in equity, and to make such final orders and decrees as the nature of the case may require.

Sec. 23. Annual list to be published.—Annual list shall be prepared and published, as herein provided. 1915, ch. 314, par. 2. The secretary of state shall annually prepare a list of all corporations that have failed to pay their annual franchise tax for the preceding year, giving the corporate name, the name of the treasurer last filed in the office of the secretary of state, and the amount of the tax due from each corporation, except those from which by reason of having been duly excused as provided by statute, or dissolved by decree of court, no franchise tax is due for such year, which list shall be published three times for three consecutive weeks in the month of August in three places within the state, namely, Bangor, Portland and Augusta, in such newspapers in each place as the secretary of state may select. If any corporation so advertised shall fail to pay all franchise tax due the state for such year, and the expenses of advertising the same, on or before the first day of December following, its charter shall be suspended, and such corporation shall have no right to use the same.

Sec. 24. Charter may be revived.—Any charter suspended under the preceding section may be revived by payment of all franchise taxes and expenses of advertising as aforesaid due from the corporation at the time of such payment. Any corporation whose charter shall have become suspended as aforesaid, shall continue liable for its yearly franchise tax, but while its charter is so suspended, no notice relating to said franchise tax need be sent to the corporation by any state officer. The data covering the suspension of said charter, to wit: the fact of publication and the dates thereof, and the suspension of said charter by reason of such publication and the failure to pay said overdue franchise tax as herein provided, shall be so entered

upon the corporation's records of the state and be certified by the secretary of state as evidence of the suspension of the charter of such corporation.

Local Taxation.

[Note—The various statutes relative to local taxation have been omitted. Section 26 of chapter 51 does not impose any duty of making returns upon corporations whose assets and business are outside of Maine. Neither the property of a corporation nor the shares of its capital stock owned by non-residents are liable to taxation in Maine when the corporation has all its assets and transacts all its business save the holding of stockholder's meetings, outside the state.]

INHERITANCE TAX.

Ch. 69. Sec. 1. **Stocks and bonds of non-residents are not subject to inheritance tax, unless corporation has tangible property in Maine exceeding \$1,000 in value.**—All property within the jurisdiction of this state, and any interest therein, whether belonging to inhabitants of this state or not, and whether tangible or intangible, which shall pass by will, by the interstate laws of this state, by allowance of a judge of probate to a widow or child by deed, grant, sale or gift, except in cases of a bona fide purchase for full consideration in money or money's worth, and except as herein otherwise provided made or intended to take effect in possession or enjoyment after the death of the grantor, to any person in trust or otherwise, except to or for the use of any educational, charitable, religious or benevolent institution in this state, the property of which is by law exempt from taxation, shall be subject to an inheritance tax for the use of the state as hereinafter provided. Property which shall so pass to or for the use of (Class A) the husband, wife, lineal ancestor, lineal descendant, adopted child, the adopted parent, the wife or widow of a son, or the husband of a daughter of a decedent, shall be subject to a tax upon the value of each bequest, devise or distributive share, in excess of the exemption hereinafter provided, of one per cent. if such value does not exceed fifty thousand dollars, one and one-half per cent if such value exceeds fifty thousand dollars and does not exceed one hundred thousand dollars, and two per cent. if such value exceeds one hundred thousand dollars; the value exempt from taxation to or for the use of a husband, wife, father, mother, child, adopted child or adopted parent shall in each case be ten thousand dollars, and the value exempt from taxation to or for the use of any other member of (Class A) shall in each case be five hundred dollars. Prop-

erty which shall so pass to or for the use of (Class B) a brother, sister, uncle, aunt, nephew, niece or cousin of decedent, shall be subject to a tax upon the value of each bequest, devise or distributive share in excess of five hundred dollars, and the tax of this class shall be four per cent. of its value for the use of the state if such value does not exceed fifty thousand dollars, four and one-half per cent. if its value exceeds fifty thousand dollars and does not exceed one hundred thousand dollars and five per cent. if its value exceeds one hundred thousand dollars. Property which shall pass to or for the use of any others than members of Class A, Class B and the institutions excepted in the first sentence of this section, shall be subject to a tax upon the value of each bequest, devise or distributive share in excess of five hundred dollars, and the tax of this class shall be five per cent. of its value for the use of the state if such value does not exceed fifty thousand dollars, six per cent. if its value exceeds fifty thousand and does not exceed one hundred thousand dollars and seven per cent. if its value exceeds one hundred thousand dollars. Administrators, executors and trustees, and any grantees under such conveyances made during the grantor's life shall be liable for such taxes, with interest, until the same have been paid.

[86 Me., 495; 88 Me., 587; 108 Me., 389.]

Ch. 69. Sec. 9. All taxes imposed by section one upon the estates of deceased residents of this state shall be payable to the treasurer of state and all taxes imposed by said section one upon the estates of non-resident decedents to the attorney general by the executors, administrators or trustees at the expiration of two years after the granting of letters testamentary or of administration; but if legacies or distributive shares are paid within two years, the tax thereon shall be payable at the same time; and if the same are not so paid, interest at the rate of six per cent. a year shall be charged and collected from the time the same became payable; but no such tax upon estates of residents or inhabitants of this state shall be accepted except upon presentation of a certificate from a probate court showing the amount of such tax due. It shall be the duty of the personal representative of said deceased to petition the probate court having jurisdiction to assess such taxes before the payment of any such legacies or distributive shares, and before the expiration of two years after the granting of letters aforesaid. The register of probate shall send by registered mail, a copy of such petition to the attorney general at least seven days before the hearing thereon unless the attorney general in writing waives the same.

Ch. 69. Sec. 10. If no such petition is filed within the time limited, the attorney general may file a similar petition, of which,

unless notice is waived, at least fourteen days' notice shall be given such personal representative or his agent. In either case the attorney general may appear and be heard upon the assessment of such tax and an appeal may be had from the decree of the judge of probate by either party. Real estate of which the decedent died seized or possessed, subject to taxes as aforesaid shall be charged with a lien for all such taxes and interest, which lien may be discharged by the payment of all taxes due and to become due upon said real estate or separate parcel thereof, or by an order or decree of the probate court discharging said lien, said order or decree to be granted by the probate court upon the deposit with said court of a sum of money or a bond, sufficient to secure to the state the payment of any tax due or to become due on said real estate. Orders or decrees discharging such lien may be recorded in the registry of deeds in the county where said real estate is located.

Ch. 69. Sec. 24. When the personal estate passing from any deceased person not an inhabitant or resident of this state, as provided in section one, shall consist of the stocks, bonds or other debt or certificate of indebtedness of any corporation organized under the laws of this state, no inheritance tax shall be assessed upon the same, unless said corporation shall at the time of such decease have tangible property within the state exceeding one thousand dollars in value. The attorney general, upon satisfactory evidence [and payment of a fee of five dollars to the use of the state]* shall file a certificate in the office of the secretary of state that any such corporation has not tangible property within the state exceeding one thousand dollars in value. Such certificate may at any time after notice and upon satisfactory evidence, be revoked. A copy of the certificate of revocation shall be sent to the clerk, and to any stock registrar or transfer agent whose name is on file with said secretary. Until the receipt of such certificate of revocation any such stock registrar or transfer agent may lawfully transfer the stock of said corporation and perform all other duties incident to his office.

Ch. 69. Sec. 25. Subject to the provisions of the preceding section if a foreign executor, administrator or trustee assigns or transfers any stock in any national bank located in this state or in any corporation organized under the laws of this state, owned by a deceased non-resident at the date of his death and liable to a tax under the provisions of this chapter, the tax shall be paid to the attorney general at the time of such assignment or transfer; and if it is not paid when due, such executor, administrator or trustee shall be personally liable therefor

* Not in Statutes but in Ch. 118, relating to fees.

until it is paid. Subject to the provisions of said section a bank located in this state or a corporation organized under the laws of this state which shall record a transfer of any share of its stock made by a foreign executor, administrator or trustee, or issue a new certificate for a share of its stock at the instance of a foreign executor, administrator or trustee before all taxes imposed thereon by the provisions of this chapter have been paid, shall be liable for such tax in an action of debt brought by the attorney general.

Ch. 69. Sec. 26. Subject to the provisions of section twenty-four no person or corporation shall deliver or transfer any securities or assets belonging to the estate of a non-resident decedent to anyone unless authority to receive the same shall have been given by a probate court of this state, and upon satisfactory evidence that all inheritance taxes provided for by this chapter have been paid, guaranteed or secured as hereinbefore provided. Any person or corporation that delivers or transfers any securities or assets in violation of the provisions of this section shall be liable for such tax in an action of debt brought by the attorney general.

PROVISIONS RESPECTING FEES.

Ch. 118. Sec. 13. **Fees to secretary of state.**—For receiving, filing and recording copy of certificate of organization of a corporation organized under chapter fifty-one, and for filing certificate of increase of capital stock under section forty-two of said chapter, five dollars, in advance. For recording notice of a change in the charter or certificate of organization of a corporation, five dollars, in advance. For a certificate under the seal of the state, one dollar; and for all copies, at the rate of twelve cents a page, if such certificate or copies are for the benefit of particular persons.

Ch. 118. Sec. 15. **Fees to attorney general.**—For approval of certificate of organization of a corporation under chapter fifty-one, five dollars, in advance. For certificate that any corporation has ceased to transact business, and is excused from filing annual returns, five dollars. For certificate that tangible property of corporation does not exceed one thousand dollars, five dollars

Ch. 118. Sec. 18. **Fees to register of deeds.**—Recording certificates of organization of corporations, and copies thereof for filing with the secretary of state, five dollars.

ACTIONS, SERVICE OF PROCESS, ETC.

Ch. 86. Sec. 2. Writ and summons may be combined in actions against corporations.—All civil actions, except scire facias and other special writs, shall be commenced by original writs; which, in the supreme judicial court, may be issued by the clerk in term time or vacation, and framed to attach the goods and estate of the defendant, and for want thereof to take the body, or as an original summons, with or without an order to attach goods and estate; and in actions against corporations and in other cases where goods or estate are attached, and the defendant is not liable to arrest, the writ and summons may be combined in one. A writ issued by the clerk of any county, may be made returnable in any other county in which the action might be legally brought.

[12 Me., 196; 34 Me., 10; 39 Me., 142, 503; 60 Me., 352; 63 Me., 30; 66 Me., 251; 71 Me., 28, 406; 81 Me., 291; 87 Me., 436; 111 Me., 92.]

Ch. 86. Sec. 13. Venue when corporation is party to action.—Local and transitory actions shall be commenced and tried as follows: When both parties are counties, in any county adjoining either; when a county is plaintiff, if the defendant lives therein, in an adjoining county; if he does not live therein, in the county in which he does live; when a county is defendant, if the plaintiff lives therein, in that county or in an adjoining county; if he does not live therein, in that county or in that in which he does live; when a corporation is one party and a county the other, in any adjoining county; when both parties are towns, parishes or school districts, in the county in which either is situated; when one party is a town, parish or school district, and the other some corporation or natural person, in the county in which either of the parties is situated or lives; but all actions against towns, for damages by reason of defects in highways, shall be brought and tried in the county in which the town is situated. All other corporations may sue and be sued in the county in which they have an established place of business, or in which the plaintiff or defendant, if a natural person lives.

[53 Me., 420; 58 Me., 536.]

Ch. 91. Sec. 5. Venue in trustee process.—If all the trustees live in the same county, the action shall be brought there; if they reside in different counties, in any county in which one of them resides; and in a trustee process against a corporation aggregate, its residence shall be deemed to be in the county in which it has its established or usual place of business, held its last annual meeting, or usually holds its meetings.

[6 Me., 406; 33 Me., 576; 54 Me., 315, 380; 57 Me., 409; 79 Me., 245; 101 Me., 413.]

Ch. 86. Sec. 15. Venue, in actions to collect state taxes.—

An action in behalf of the state to enforce the collection of state taxes upon any corporation, or to recover of any person or corporation moneys due the state, public funds or property belonging to the state, or the value thereof, may be brought in any county; *provided*, that on motion of the defendant, any justice of the supreme judicial court, holding the term at which such action is returnable, may, for sufficient reasons shown, remove the same to the docket of said court in any other county for trial, and may upon such removal, award costs to the defendant for one term, to be paid by the treasurer of state on presentation of the certificate of the amount thereof, from the clerk of courts of the county from which said action is transferred.

Ch. 86. Sec. 19. Service of process.—

In suits against a county, the summons shall be served by leaving an attested copy thereof with one of the county commissioners or their clerk; against a town, parish, religious society or school district, with the clerk, or one of the selectmen or assessors, if there is any such officer; if not, with a member of such corporation; and against any other corpo at on, however created, with its president, clerk, cashier, treasurer, general agent or director; if there is no such officer or agent found within the county where such corporation is established, or where its records or papers are by law required to be kept, with any member thereof; and in all suits and proceedings at law or in equity against any foreign or alien company or corporation established by the laws of any other state or country, and having a place of business within this state or doing business herein, service of the writ, bill, petition or other process is sufficient, if made by leaving an attested copy thereof with the president, clerk, cashier, treasurer, agent, director or attorney of such company or corporation, or by leaving such copy at the office or place of business of such company or corporation within this state; and in each case, it shall be so served thirty days before the return day thereof.

[16 Me., 372; 47 Me., 304; 67 Me., 496; 71 Me., 360; 91 Me., 434.]

Ch. 86. Sec. 20. Service by filing copy, in certain cases.—

When no officer, general agent or member of a domestic corporation, can be found in the county in which the same is located, or in the county in which its last certificate of election of clerk was filed, the officer having in his hands any process for service on such corporation, may file a copy thereof in the registry of deeds of the county in which such corporation was located, or in which its last certificate of election of clerk was filed, and make return of his doings, which service is sufficient to hold said corporation to answer to such process.

Ch. 91. Sec. 8. Corporations may be summoned as trustees.—All domestic corporations and all foreign or alien companies or corporations established by the laws of any other state or country, and having a place of business, or doing business within this state may be summoned as trustees, and trustee writs may be served on them as other writs are served on such companies or corporations, except that the service shall be by the summons described in section three of this chapter, and they may answer by attorney or agent, and make disclosures, which shall be signed and sworn to by such attorney or agent or such other person upon whom legal service of the writ may be made; and the same proceedings shall thereupon be had throughout except necessary changes in form, as in other cases of foreign attachment.

[34 Me., 590; 37 Me., 321; 47 Me., 304; 51 Me., 371; 52 Me. 593; 55 Me., 350; 62 Me., 256; 67 Me., 496; 81 Me., 473; 111 Me., 83.]

Ch. 87. Sec. 28. Treasurers of corporations may sue in own names.—Treasurers of state, counties, towns and corporations, may maintain suits in their own names as treasurers on contracts given to them or their predecessors, and prosecute suits pending in the name of their predecessors.

[74 Me., 219.]

Ch. 108. Sec. 3. Demand in dower actions.—When a corporation is the tenant of the freehold, she [the widow] must demand her dower in writing of any officer thereof, on whom a writ in a civil action against it may be served; and the time between the demand and the suit shall be sixty days; but a second demand may be made as aforesaid.

[70 Me., 181; 106 Me., 379.]

Ch. 87. Sec. 155. Travel in actions by a corporation.—In actions of a corporation, its travel is computed from the place wher it is situated, if local, otherwise from the place where its business is usually transacted, not exceeding forty miles, unless its agent actually travels a greater distance to attend court.

ATTACHMENTS.

Ch. 86. Sec. 29. Attachment of corporate franchise and property.—The franchise and all right to demand and take toll, and all other property of a corporation, may be attached on mesne process, and the attaching officer shall leave an attested copy of the writ with a notice of the attachment thereon, signed by him, with the cler

treasurer or some officer or member of the corporation, as provided in section nineteen.

[42 Me., 425.]

Ch. 86. Sec. 28. Attachment of shares in a corporation — When the share or interest of any person in an incorporated company is attached on mesne process, an attested copy of the writ with a notice thereon of the attachment, signed by the officer, shall be left with the clerk, cashier or treasurer of the company; and such attachment is a lien on such share or interest, and on all accruing dividends; and if the officer having the writ exhibits it to the officer of the company having custody of the account of shares or interest of the stockholders, and requests a certificate of the number held by the defendant, and such company officer unreasonably refuses to give it, or wilfully gives him a false certificate thereof, he shall pay double the damages occasioned by such refusal or neglect; to be recovered against him in an action on the case by the creditor.

[63 Me., 514.]

Ch. 89. Sec. 23. Successive attachments of shares in a corporation.—If a share in a corporation, or other property that may be attached without taking and keeping possession thereof, is attached or taken on execution, and is subsequently attached or taken on execution by another officer, he shall give notice thereof to the officer who sells under the first attachment or seizure; and if, without such notice, he pays the balance of the proceeds of the sale to the debtor, he is not liable therefor to the person claiming under such subsequent attachment or seizure.

Ch. 91. Sec. 36. Stockholder's liability may be trustee.— Any debt or legacy due from an executor or administrator, and any goods, effects and credits in his hands, as such, may be attached by trustee process. The amount, which a stockholder of a corporation is liable to pay to a judgment creditor thereof, may be attached by a creditor of such judgment creditor, by trustee process served on such stockholder at any time after the commencement of the judgment creditor's action against him, and before the rendition of judgment therein.

[19 Me., 203; 39 Me., 404; 65 Me., 301; 74 Me., 485; 78 Me., 158; 80 Me., 329.]

Ch. 86. Sec. 76. Attachment of shares vacated by bond.— When personal property is attached, the same proceedings may be had, as provided in the four preceding sections, and the officer shall also be notified of the hearing; and the delivery to him of the copy

and certificate mentioned in the preceding section, vacates the attachment, and he shall return the property to the petitioner on demand. When the property attached is stock in a banking or other corporation, or is such that the attachment must be recorded in the town clerk's office, such copy and certificate shall be filed with the officer of such corporation who shall be entitled to twenty cents for filing the same and necessary certificate thereof, or with the town clerk with whom the attachment is filed; and thereby the attachment is vacated.

[Note—The “four preceding sections” referred to are as follows:]

Sec. 72. Any defendant, whose interest in real estate is attached on mesne process, may petition in writing to a justice of the supreme judicial court, in term time or vacation, setting forth the names of the parties to the suit, the court and county in which it is returnable or pending, the fact of the attachment, the particular real estate, and his interest therein, its value, and his desire to have it released from the attachment. Such justice shall issue a written notice, which shall be served on all parties to the suit living in the state, including trustees mentioned in section seventy-seven, and on the plaintiff's attorney, ten days at least before the time fixed therein for a hearing.

Sec. 73. If, at the hearing, such justice finds that such interest is worth as much as the amount ordered in the writ to be attached, he shall order such defendant to give bonds to the plaintiff, with sufficient sureties, conditioned to pay the judgment recovered by the plaintiff, with his costs on the petition, within thirty days after judgment. If he finds that it is worth less, the bond shall be conditioned to pay the value of such interest so found and costs on the petition, within said time.

Sec. 74. The petition and proceedings thereon shall be filed in the clerk's office in the county where the action is pending or returnable, and recorded as a part of the case; and the bond, when approved by such justice, shall also be filed therein for the use of the plaintiff.

Sec. 75. The clerk shall give the petitioner an attested copy of the petition and proceedings, with a certificate, under seal of the court, attached thereto, that such bond has been duly filed in his office; and the recording of such copy and certificate in the registry of deeds in the county where such real estate or interest therein lies, vacates the attachment]

Ch. 86. Sec. 79. Attachment of shares vacated by bond—another provision.—When real estate or personal property is attached on mesne process, and in all cases of attachment on trustee process, the attachment shall be vacated, upon the defendant, or some one in his behalf, delivering to the officer who made such attachment, or to the plaintiff or his attorney, a bond to the plaintiff in such sum

not less than the ad damnum of the writ and with such sureties as may be approved by the plaintiff or his attorney, or by any justice or clerk of the supreme judicial or superior courts; conditioned that within thirty days after the rendition of the judgment, or after the adjournment of the court in which it is rendered, or after the certificate of decision of the law court shall be received in the county where the cause is pending, he will pay to the plaintiff or his attorney of record, the amount of said judgment including costs; the bond shall be returned by the officer with the process, for the benefit of the plaintiff, and thereupon all liability of the officer to the plaintiff by reason of such attachment shall cease. Upon request the plaintiff or his attorney, shall give to the defendant a certificate acknowledging the discharge of such attachment, which may be recorded in the registry of deeds or town clerk's office, as the case may be, in which the return of the attachment is filed. If stock in any corporation is attached, such certificate shall be filed with the officer of the corporation, with whom the return of such attachment is filed, and he shall record the same. In trustee process the alleged trustee shall not be liable to the principal defendant for the goods, effects and credits in his hands or possession until such certificate shall be delivered to him, and upon receiving such certificate, he shall be discharged from further liability in said trustee action, and need not disclose, and shall not recover costs.

SALES ON EXECUTION, ETC.

Ch. 89. Sec. 12. Sale of shares of stock on execution.—Any share or interest of a stockholder or proprietor in an incorporated company, may be taken on execution and sold in the following manner, and not otherwise, anything in the charter of such company to the contrary notwithstanding.

Ch. 89. Sec. 13. Notice of seizure, how given.—If the property was not attached on mesne process in the same suit, the officer shall leave a copy of the execution with the treasurer, cashier, clerk or other recording officer of the company, and the property shall be considered as seized on execution when the copy is so left. If it was so attached and remains attached, the officer shall proceed in seizing and selling it on execution as in section 16.

Ch. 89. Sec. 14. Certificate of debtor's shares to be furnished.—The officer of the company having the care of the records or account of shares, or interest of the stockholders, shall, on exhibition to him of the execution, give the officer holding it a certificate of the number of shares held by the judgment debtor, or of the amount

of his interest, under the penalty provided in section twenty-eight of chapter eighty-three.

Ch. 89. Sec. 15. Purchaser entitled to new certificate.—Within fourteen days after the sale, the officer shall leave an attested copy of the execution and of the return thereon, with the officer of the company whose duty it is to record transfers of shares; and the purchaser is thereupon entitled to a certificate or certificates of the shares bought by him, on paying the fees therefor, and for recording the transfers; and if such shares or interest were attached in the suit in which the execution issued, he shall have all dividends which accrued after the attachment.

[63 Me., 514.]

Ch. 89. Sec. 16. Notice of sale, how given.—In selling such shares or interest, the officer holding the execution shall give notice in writing of the time and place of sale to the debtor, by leaving it at his last and usual place of abode, if within the county where the officer dwells; and public notice thereof by posting it in one or more public places in the town where the sale is to be made, and in two adjoining towns, if there are so many, thirty days at least before the day of sale; and shall publish an advertisement of the same import, naming the judgment debtor, for three weeks successively before the day of sale, in some public newspaper printed in the county, if any, if not, in the state paper; and if the debtor never lived in the county, posting the notification and publishing the advertisement as aforesaid are sufficient.

[74 Me., 20.]

Ch. 81. Sec. 39. Corporation's title as mortgagee may be sold on execution.—The titles of banks or corporations, as mortgagees of land, may be taken on execution and sold as real estate and interests therein are taken and sold. The officer may by deed convey the same, and a debt secured by such mortgage and remaining unpaid will pass with the mortgagee's title to the purchaser, who may recover the premises or debt in his own name. In such action, a copy of the mortgage, attested by the register of deeds, is prima facie evidence of such deed, and of the contracts secured by it, as remaining due at the time of trial. The cashier of the bank or clerk of the corporation, on reasonable request of the officer, shall furnish him with a certified copy of such contract, and of all payments made thereon.

Ch. 81. Sec. 40. Transfers after notice of seizure invalid.—No transfer of such mortgage, or of the debt secured thereby, made by such corporation after notice of the seizure thereof on execution

has been filed in the registry where the land lies, or given to the party to be affected thereby, has any validity against the purchaser at such sale.

Ch. 81. Sec. 41. Redemption by corporation.—Real estate, and rights and interests therein, and mortgages and debts so sold, may be redeemed within one year, as land levied on by appraisalment may be; and the rights and remedies of the parties are the same for this purpose, as those of mortgagor and mortgagee.

[1 Me., 299; 2 Me., 340; 10 Me., 164; 52 Me., 406.]

CRIMES AND OFFENCES.

Ch. 123. Sec. 9. Forging signatures of corporate officers.—If any person, legally authorized to take the proof or acknowledgment of any instrument that by law may be recorded, wilfully and falsely certifies that such proof or acknowledgment was duly made; or if any person fraudulently affixes a fictitious or pretended signature, purporting to be that of an officer or agent of a corporation, to any written instrument purporting to be a draft, note or other evidence of debt issued by such corporation, with intent to pass the same as true, although such person never was an officer or agent of such corporation, or never existed, he is guilty of forgery and shall be punished as provided in section one.

Ch. 123. Sec. 10. Making false stock certificates—unauthorized sales or pledges.—If an officer or agent of a corporation wilfully signs with intent to issue, or issues any certificate purporting to be a certificate or other evidence of the ownership or of the transfer of any stock in such corporation, not authorized by its charter, by-laws or votes, or without such authority issues, sells or pledges such certificate or other evidence of ownership or transfer of stock after it is lawfully signed, he shall be punished by imprisonment in the state prison for not more than ten years, and by fine not exceeding one thousand dollars.

Ch. 123. Sec. 11. Acting for corporation after forfeiture of charter.—Whoever undertakes to do business, or does business of any kind in behalf of any corporation, the charter of which has been forfeited under the provisions of chapter two hundred and thirty-five, of the public laws of nineteen hundred and three, or holds out such corporation as doing business, or sells, transfers or puts upon the market any stocks or other evidence of indebtedness whatsoever of any such corporation, shall be punished by a fine of three hundred dollars.

MISCELLANEOUS PROVISIONS.

Rules of construction of statutes.—The following rules shall be observed in the construction of statutes, unless such construction is inconsistent with the plain meaning of the enactment.

Ch. 1. Sec. 6. I. Words and phrases shall be construed according to the common meaning of the language. Technical words and phrases, and such as have a peculiar meaning convey such technical or peculiar meaning.

[47 Me., 347; 49 Me., 525; 58 Me., 170, 328; 63 Me., 63; 64 Me., 129; 72 Me., 461; 75 Me., 116; 88 Me., 404; 98 Me., 83; 105 Me., 111; 111 Me., 286; 112 Me., 362.]

II. Words of the singular number may include the plural; and words of the plural number may include the singular. Words of the masculine gender may include the feminine.

[105 Me., 306.]

III. Words giving authority to three or more persons authorize a majority to act, when the enactment does not otherwise determine.

[39 Me., 223; 48 Me., 358-9, 406; 62 Me., 519; 63 Me., 265; 64 Me., 262; 77 Me., 129; 79 Me., 130.]

* * * * *

X. The word "land or lands," and the words "real estate," include lands and all tenements and hereditaments connected therewith, and all rights thereto and interests therein.

[69 Me., 347; 78 Me., 97; 85 Me., 331; 86 Me., 77, 131; 105 Me., 532.]

* * * * *

XII. The word "month" means a calendar month; and the word "year," a calendar year, unless otherwise expressed. The word "year," used for a date, means year of our Lord.

[47 Me., 393; 64 Me., 332.]

XIII. The word "oath" includes an affirmation, when affirmation is allowed.

XIV. The word "person" may include a body corporate.

[70 Me., 181; 95 Me., 448; 105 Me., 306.]

XV. By the words "preceding" or "following," used with reference to a section, is meant the section next preceding or following that in which it is used, when not otherwise expressed.

* * * * *

XVII. Whenever a corporate seal is used or required on any instrument, an impression made on the paper of such instrument by the seal of the corporation, without any adhesive substance, shall be deemed a valid seal.

XVIII. The words "United States" include territories and the District of Columbia. The word "state," used with reference to any organized portion thereof, may mean a territory or said district.

XIX. The word "town" includes cities and plantations, unless otherwise expressed or implied.
[56 Me., 31; 66 Me., 155; 71 Me., 142; 77 Me., 422; 82 Me., 194.]

XX. The words "in writing" and "written" include printing and other modes of making legible words. When the signature of a person is required, he must write it or make his mark.

* * * * *

XXII. The words "sworn," "duly sworn," or "sworn according to law," used in a statute, record, or certificate of administration of an oath, refer to the oath required by the constitution or laws in the case specified, and include every necessary subscription to such oath.
[30 Me., 326; 41 Me., 226; 42 Me., 376; 58 Me., 532; 84 Me., 378.]

XXIII. When an act that may be lawfully done by an agent, is done by one authorized to do it, his principal may be regarded as having done it.
[48 Me., 554; 59 Me., 175; 68 Me., 92, 387; 95 Me., 554.]

* * * * *

XXVII. Abstracts of titles and chapters, and marginal and other notes are not legal provisions.

Ch. 1. Sec. 7. **Affirmations, when authorized.**—When a person required to be sworn, is conscientiously scrupulous of taking an oath, he may affirm.

Ch. 77. Sec. 18. **Deeds and contracts by agent bind corporation.**—Deeds and contracts, executed by an authorized agent of a person or corporation in the name of his principal, or in his own name for his principal, are in law the deeds and contracts of such principal.

[1 Me., 234, 342; 23 Me., 59; 59 Me., 175, 486; 61 Me., 122; 68 Me., 92; 72 Me., 41; 75 Me., 502; 76 Me., 204; 96 Me., 526.]

Ch. 66. Sec. 4. Married women may hold stock, and act as incorporators and officers in corporations.—A husband married since April twenty-six, eighteen hundred and fifty-two, is not liable for the debts of his wife contracted before marriage, nor for those contracted afterward in her own name, for any lawful purpose; nor is he liable for her torts committed after April twenty-six, eighteen hundred and eighty-three, in which he takes no part; but she is liable in all such cases; a suit may be maintained against her therefor, and her property may be attached and taken on execution for such debts and for damages for such torts, as if she were sole; but she cannot be arrested.

[41 Me., 245; 42 Me., 116; 55 Me., 516; 57 Me., 547; 63 Me., 409; 64 Me., 181; 65 Me., 222; 69 Me., 110, 252; 76 Me., 426; 80 Me., 537; 82 Me., 260; 91 Me., 546; 95 Me., 107; 96 Me., 533; 112 Me., 370.]

Sec. 5. She may prosecute and defend suits at law or in equity, either of tort or contract, in her own name, without the joinder of her husband, for the preservation and protection of her property and personal rights, or for the redress of her injuries, as if unmarried, or may prosecute such suits jointly with her husband, and the husband shall not settle or discharge any such action or cause of action without the written consent of the wife. Neither of them can be arrested on such writ or execution, nor can he alone maintain an action respecting his wife's property.

[33 Me., 197; 35 Me., 339; 46 Me., 298; 51 Me., 79; 54 Me., 159; 55 Me., 247, 359; 58 Me., 55; 67 Me., 309; 68 Me., 104, 277; 70 Me., 382; 76 Me., 423; 80 Me., 537; 84 Me., 82; 88 Me., 22; 91 Me., 553; 110 Me., 305.]

MORTGAGES OF PERSONAL PROPERTY.

Ch. 96. Sec. 1. Mortgages of personal property, when valid, provisions as to record.—No mortgage of personal property executed and delivered after the third day of July, nineteen hundred and fifteen, shall be valid against a trustee in bankruptcy or an assignee in insolvency of the mortgagor, or against an assignee under a general assignment for the benefit of the creditors of the mortgagor, or against any person other than the mortgagor, unless and until possession of such property is delivered to the mortgagee within ten days from the date written in said mortgage, or, when undated, then from the date of execution and delivery of the same, and unless such possession is retained by the mortgagee, or unless and until the mortgage is recorded within the said period of ten days in the office of the clerk of the city, town or plantation organized for any purpose, in which the mortgagor

resides when the mortgage is given, or registry of deeds as hereinafter provided. When all mortgagors reside without the state the mortgage shall be so recorded in the office of the register of deeds in the registry district where the property is when the mortgage is made; but if a part of the mortgagors reside in the state, then in the cities, towns or plantations so organized in which such mortgagors reside when the mortgage is given. If any mortgagor resides in an unorganized place, the mortgage shall be so recorded in the office of the register of deeds for the registry district in which such unincorporated place is located. A mortgage made by a corporation shall be so recorded in the city, town or plantation where it has its established place of business, and, if said corporation has no established place of business in the state, or said place of business is in an unorganized place in the state, then in the office of the register of deeds for the registry district in which such property is when the mortgage is made. Such chattel mortgages need not be acknowledged for presentation for record. If possession is taken or said mortgage recorded subsequent to said period of ten days, it shall be valid against mortgages, assignments and bills of sale executed and delivered subsequent to the making of said record, and also against attachments made subsequent thereto, based upon causes of action arising subsequent thereto, and also against trustees in bankruptcy and common law assignees, so far as relates to claims accruing subsequent thereto.

[19 Me., 169; 21 Me., 92; 22 Me., 561; 24 Me., 108, 558; 25 Me. 421; 27 Me., 404; 30 Me., 184; 31 Me., 74; 32 Me., 30, 237; 33 Me., 319; 34 Me., 209; 37 Me., 186, 545; 40 Me., 413, 562; 42 Me., 131, 174; 44 Me., 18; 45 Me., 605; 46 Me., 296, 415; 47 Me., 13, 505; 48 Me., 30, 369, 550, 586; 49 Me., 98, 567; 50 Me., 129, 396; 51 Me., 601; 53 Me., 321; 55 Me., 81; 56 Me., 464; 59 Me., 320; 65 Me., 490; 72 Me., 400; 73 Me., 198; 83 Me., 528; 87 Me., 171; 92 Me., 69; 97 Me., 363; 100 Me., 294; 104 Me., 317; 113 Me., 441.]

Ch. 96, Sec. 77. Enforcement of pledges of stocks and bonds.

—The holder of stocks, bonds or other personal property in pledge for the payment of money or the performance of any other thing, may, after failure to pay or perform, sell such stocks, bonds or other personal property in the manner provided in the contract creating the pledge, if in writing, or he may proceed as hereinafter provided. He may give written notice to the pledger that he intends to enforce payment by a sale of the pledge; and shall serve the same by leaving a copy with the pledger, if his residence is known to the holder, otherwise by publishing it at least once a week for three successive weeks, in one of the principal newspapers, if any, in the city or town where the pledgee resides, otherwise, in one of the principal newspapers published in the county, or in the state paper. Such notice,

together with an affidavit of service, shall be recorded in the clerk's office of the city or town where the pledgee resides.

[96 Me., 43, 430.]

Ch. 96, Sec. 78. If the money to be paid or the thing to be done is not paid or performed, or tender thereof made, within sixty days after such notice is so recorded, the holder may sell the pledge at public auction, and apply the proceeds to the satisfaction of the debt or demand and the expenses of the notice and sale, and any surplus shall be paid to the party entitled thereto on demand.

[96 Me., 43, 430.]

PART IV.—SPECIAL ADVANTAGES OF MAINE CORPORATION LAWS.

- 1—May capitalize to an unlimited amount, either originally or by subsequent increase.
- 2—May begin business before any of the capital is paid in.
- 3—May begin business with only three shares subscribed.
- 4—May have business offices, hold property without limit, and conduct business in any part of the world.
- 5—May create preferred or guaranteed stock, founders shares and any other class of stock and fix all characteristics thereof by vote of stockholders or incorporators.
- 6—May issue full paid stock for property or services rendered, relieving the holder from any liability thereon.
- 7—May avoid publicity, if desired, since not required to file any statement showing manner of payment of stock.
- 8—May issue bonds to any amount, and secure same by mortgage on the corporate property.
- 9—May purchase, hold and sell stocks and bonds of other corporations, and while owners thereof vote on such stock.
- 10—May increase or reduce the capital stock, or change the par value of the shares.

- 11—May change the number of directors, or the location of the corporation.
- 12—May elect, if desired, non-residents to fill all offices, including directors, except clerk of the corporation.
- 13—May divide directors into classes, and elect a part each year, to hold for a term of years.
- 14—May provide by by-laws for cumulative voting.
- 15—May insert as many different purposes in certificate of organization as desired,—not necessary to state corporate powers,—all necessary and statutory powers are implied.
- 16—May contract as fully as individuals.
- 17—May incur debts to any amount.
- 18—May guarantee the obligations of other corporations in which they are interested.
- 19—May make provisions for chairmen, committees, inspectors of elections, etc., using the best and most approved methods of corporate management.
- 20—May keep all books, except minutes of meetings of stockholders, out of the state.
- 21—May organize without the personal presence of non-resident incorporators.
- 22—May hold stockholders' meetings in Maine wholly by proxies to local representatives, if desired.
- 23—May provide by by-law for election of all officers by board of directors.

- 24—May, by express provision of statute, validate all meetings, though defectively called, by written consent thereto.
- 25—May be excused from paying franchise taxes and making annual returns while the franchise remains unused.
- 26—May be organized for much smaller fees, and are required to pay much smaller franchise taxes, than in any other safe or conservative state.
- 27—May exist perpetually.
- 28—Not required to file or publish list of stockholders, statement of financial condition, or any statement except names of president, treasurer, and directors, and amount of authorized capital.
- 29—Not required to publish anything in newspapers, either at organization or subsequently.
- 30—Not required to pay taxes, except small franchise tax, and local or municipal taxes on property situated in Maine.
- 31—Not required to indicate by corporate name the business of the corporation, or to use the term "Company."
- 32—Not required to elect resident directors. All meetings of directors may be held out of the state.
- 33—Stockholders incur no liability on stock paid for in cash, property, services, or stock of another corporation. Determination of value of such property or services is not left to the Court, but to the judgment of the directors. Actual fraud necessary to impose liability.
- 34—Stockholders incur no liability for stock purchased of any existing stockholder, though such stock has never been fully paid for to the corporation.

- 35—Stockholders incur no liability on stock paid for at less than par, except for debts contracted during their ownership of such stock. Suit to enforce any such liability must be brought within two years after the right of action accrues, and during such ownership or within one year after its transfer.
- 36—Stockholders incur absolutely no personal liability on bonds and other debts secured by mortgage.
- 37—Stockholders—non-resident—not subject to taxation on their stock, when corporate property and business are outside Maine.
- 38—Minority stockholders are protected against loss by sale or lease by majority of corporation franchises, but cannot prevent such transfer.
- 39—Maine is a thoroughly conservative state, and the corporation laws are not likely to be changed in any material respect in the near future.
- 40—The high standing of the Courts of Maine is a sufficient protection for all dealing with a Maine corporation. Vested with full equity jurisdiction, they are quick to prevent abuse of the corporate privileges.

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